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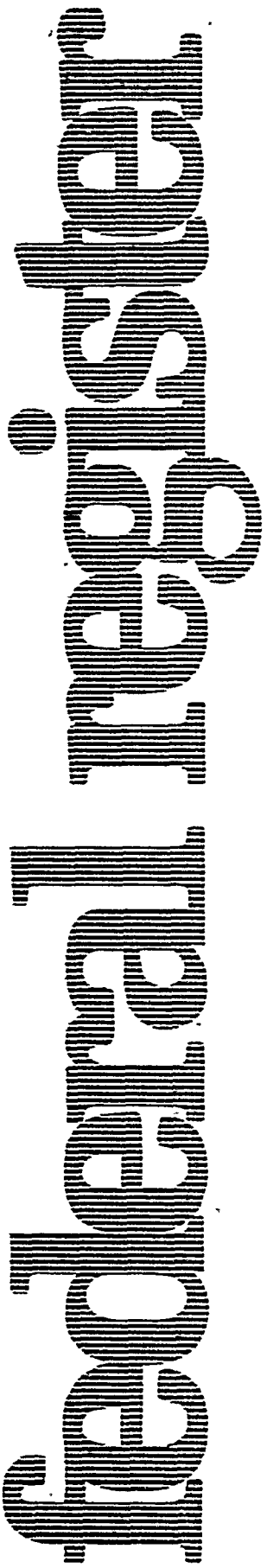

Tuesday
July 31, 1979

Highlights

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Highlights

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Rules and Regulations

Federal Register
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Tuesday, July 31, 1979

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 315

Career and Career-Conditional Employment

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: In accordance with 5 USC 3321, as amended by Public Law 95-454, and section 2-103 of Executive Order 12107, this regulation provides for the establishment of a probationary period for new appointees to supervisory or managerial positions and authorizes return rights for employees who fail to satisfactorily complete the probationary period.

EFFECTIVE DATE: Upon implementation by individual agencies, but no later than August 11, 1979.

FOR FURTHER INFORMATION CONTACT: Raleigh M. Neville, Office of Staffing Policies, Office of Personnel Management, Room 6526, 1900 E Street, N.W., Washington, D.C. 20415. 202-632-6817.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1979, the Office of Personnel Management published interim regulations to implement a probationary period requirement for new managers and supervisors and invited comments from the public on its proposals. Comments and suggestions were given very careful consideration. As a result, the Office has modified its final regulations as set forth below. The Office will also supplement the regulations with guidance issued through the Federal Personnel Manual System to clarify certain items addressed during the public comment period, which are outside the scope of the regulations.

Three significant aspects of the regulations were the focus of comment and are discussed below:

Definitions

Several agencies questioned the desirability of a split definition for manager and supervisor under which employees at GS-13 and above would be subject to the definition from title VII of Pub. L. 95-454 (the labor relations definition), while those at GS-12 and below would be subject to the definition of manager and supervisor used for position classification (from OPM's Supervisory Grade Evaluation Guide). The concern was that the title VII labor relations definition might lead to unnecessary disputes over which positions are covered. Extension of the Supervisory Grade Evaluation Guide (SGEG) definition across the board would facilitate effective administration of this provision. For those reasons, OPM's final regulations adopt the Supervisory Grade Evaluation Guide definitions of manager and supervisor for all grade levels.

Grievance Coverage

Several agencies expressed the view that grievance coverage for employees returned to their former positions or equivalent under this subpart should be either optional with the agency or not allowed at all. Under the interim regulations, grievance coverage was mandatory. As a result of these comments, and to make this provision consistent with the policy for the probationary period for initial appointment under subpart H, OPM's final regulations make grievance coverage optional.

Length of the Probationary Period

Some commenters recommended that OPM prescribe the length of the probationary period in light of its Government-wide impact. Because of the many variables among agencies and positions and the desire to give agencies maximum flexibility in this area, OPM's final regulations continue to allow agencies to determine the length of the probationary period.

Union Comments

Union comments concentrated on the rights of employees who fail to complete the probationary period. One suggested obligating the position formerly occupied by the employee until the probationary period is completed. Another recommended that the position to which returned be in the commuting area. OPM has no authority to obligate positions. Moreover, such a requirement would impose unreasonable limitations on an agency's authority to fill positions and would create administrative problems of its own. Similarly, a requirement that the position be in the same commuting area could lead to serious operational problems. The requirements of law, as reflected in the regulations, provide adequate protection for employees by guaranteeing a position at the same grade with no loss in pay.

The same union suggested employees be permitted to appeal actions returning them to nonsupervisory positions to the Merit Systems Protection Board, and that upon return to a bargaining unit, the employees have the right to grieve the agency's action under the negotiated grievance procedures. OPM has no authority to regulate negotiated grievance procedures. Granting these probationers appeal rights to MSPB would defeat the basic program of the probationary period and would be inconsistent with the regulations covering other probationers under 5 CFR subpart H.

Accordingly, the headnote of Subpart H of Part 315 of 5 CFR is amended and a new Subpart I is added as follows:

Subpart H—Probation on Initial Appointment to a Competitive Position

* * * * *

Subpart I—Probation on Initial Appointment to a Supervisory or Managerial Position

Sec.

Authority.—5 U.S.C. 3321, EO 12107.

Subpart I—Probation on Initial Appointment To A Supervisory or Managerial Position

§ 315.901 Statutory Requirement.

5 USC 3321 provides for "a period of probation . . . before initial appointment as a supervisor or manager becomes final." It also says that a supervisor or manager "who does not satisfactorily complete the probationary period . . . shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned or promoted." This subpart contains OPM regulations implementing those requirements of law.

§ 315.902 Definitions.

In this subpart "supervisory position" and "managerial position" have the meaning given them by chapter 315, subchapter 9 of the Federal Personnel Manual.

§ 315.903 Coverage.

This subpart applies to appointments and positions without time limitation in the competitive civil service. Agencies may, at their option, apply these provisions to time-limited appointments and positions. This subpart does not apply to appointments or positions in the Senior Executive Service.

§ 315.904 Basic Requirement.

(a) An employee is required to serve a probationary period prescribed by the agency upon initial appointment to a supervisory and/or managerial position.

(b) An employee is required to complete a single probationary period in a supervisory position and a single probationary period in a managerial position, regardless of the number of agencies, occupations, or positions in which the employee serves. However, an agency may by regulation provide for exceptions to the probationary period for managers who have satisfactorily completed a probationary period for supervisors when justified on the basis of performance and experience.

(c) Employees who, as of the date this requirement is effective, are serving or have served in Federal civilian supervisory or managerial positions without time limitation, or in time-limited supervisory or managerial positions under an official assignment exceeding 120 days, are exempt from its provisions, except that supervisors who are assigned to managerial positions may, according to agency regulations, be required to serve a probationary period for managers.

§ 315.905 Length of the Probationary Period.

The authority to determine the length of the probationary period is delegated to the head of each agency, provided that it be of reasonable fixed duration, appropriate to the position, and uniformly applied. An agency may establish different probationary periods for different occupations or a single one for all agency employees.

§ 315.906 Crediting Service Toward Completion of the Probationary Period.

(a) An employee who is reassigned, transferred, or promoted to another supervisory or managerial position while serving a probationary period under this subpart is subject to the probationary period prescribed for the new position. Service in the former position counts toward completion of the probationary period in the new position. If the former position was supervisory and the new position managerial, service counts in the manner prescribed by agency regulation.

(b) The conditions under which prior service is otherwise counted toward completion of the probationary period will be published in the Federal Personnel Manual.

§ 315.907 Failure to Complete the Probationary Period.

(a) Satisfactory completion of the prescribed probationary period is a prerequisite to continued service in the position. An employee who, for reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period, is entitled to be assigned to a position in the agency of no lower grade and pay than the employee left to accept the supervisory or managerial position.

(b) The agency must notify the employee in writing that he or she is being assigned in accordance with this section.

§ 315.908 Appeals.

(a) An employee who, in accordance with the provisions of this subpart, is assigned to a nonmanagerial or nonsupervisory position, has no appeal right.

(b) An employee who alleges that an agency action under this subpart was based on partisan political affiliation or marital status, may appeal to the Merit Systems Protection Board.

§ 315.909 Relationship to Other Actions.

(a) If an employee is required to concurrently serve both a probationary period under this subpart and a probationary period under subpart H of this Part, the latter takes precedence and completion of the probationary period for competitive appointment and fulfills the requirements of this subpart.

(b) An action which demotes an employee to a lower grade than the one the employee left to accept the supervisory or managerial position, and an action against an employee for reasons other than supervisory or managerial performance, is governed by Part 432 or 752 procedures, whichever is applicable. If the employee believes an action under this subpart was based on improper discrimination or other prohibited practices under 5 USC 2302, he or she may appeal to the Merit Systems Protection Board or the Equal Employment Opportunity Commission, as appropriate.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-23569 Filed 7-30-79; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Parts 315, 316, 410, 550, and 831

Career and Career-Conditional Employment, Temporary and Term Employment, Training, Pay Administration (General), and Retirement

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: These regulations implement sections of the Civil Service Reform Act relating to: (1) noncompetitive appointment of disabled veterans having compensable service-connected disabilities of 30 percent or more; (2) training employees for placement in other agencies in lieu of separation under conditions which would entitle the employees to severance pay; (3) reduction in retired or retainer pay of retired military personnel serving in Federal civilian positions; and (4) addition of major reorganization and major transfers of functions as conditions permitting the Office to authorize early optional retirement.

EFFECTIVE DATE: July 31, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, Recruitment/Agency Services Branch, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, (202) 632-4533.

SUPPLEMENTARY INFORMATION:

Background

On January 23, 1979, the Office of Personnel Management published interim regulations to implement the above cited sections of the Civil Service

Reform Act (44 FR 4649–50); and on February 16, 1979, the Office published interim regulations amending those regulations relating to reduction in military retired or retainer pay (44 FR 10045). Comments from the public were invited on these interim regulations. Comments were received from six organizations.

As a result of comments and suggestions received during this period, the Office has modified the final regulations as discussed below. The Office will also supplement the regulations with guidance issued through the Federal Personnel Manual System which will address certain other concerns expressed during the public comment period. To provide disabled veterans with the full benefits intended by section 307(b) of the Reform Act, the regulations provide for noncompetitive term appointments of veterans having compensable service-connected disabilities of 30 percent or more. This authority is implicit in the statutory provision for noncompetitive appointments, but was not expressly stated in the interim regulations.

Eligibility of Disabled Veterans for Noncompetitive Appointment

Two Federal agencies asked whether a qualifying rating of 30 percent or greater disability could be issued by either the Department of Defense or the Veterans Administration, whether the higher rating would govern in case of conflict, whether the rating must be current, and whether persons medically discharged or retired or released from active duty based on disability would be covered by the noncompetitive appointment authority. To clarify these issues, the regulations governing temporary and term appointments have been amended to define disabled veterans for this purpose as those who have been retired from active military service with a disability rating of 30 percent or more, or who have a rating of compensable disability of 30 percent or more issued by the Veterans Administration within the past year. Determination of eligibility for noncompetitive appointment may be made either at the time of qualifying temporary or term appointment or at the time of conversion, except that continued eligibility must be verified at the time of conversion if 30 percent disability was not documented at the time of the qualifying appointment, or if the qualifying appointment was made more than 1 year ago.

Reduction in Retired or Retainer Pay

Several comments suggested that the regulation more clearly delineate the responsibilities of civilian agencies and uniformed services finance centers in administering the reduction in retired or retainer pay provisions and that references to military finance centers be changed to uniformed services finance centers. These suggestions have been adopted.

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

Accordingly, 5 CFR is amended as follows: (1) Part 315 is amended by adding a new § 315.703d as set forth below:

§ 315.703d Disabled veterans.

(a) *Eligibility.* (1) Subject to requirements concerning qualifications and probationary period published by the Office in the Federal Personnel Manual, an agency may convert the employment of a disabled veteran who meets the conditions below to career or career-conditional employment from a time-limited appointment of more than 60 days.

(2) To be eligible for conversion under this paragraph, the veteran must:

(i) Have been retired from active military service with a disability rating of 30 percent or more;

(ii) Have been rated by the Veterans Administration within the preceding year as having a compensable service-connected disability of 30 percent or more; or

(iii) Have had such a rating by the Veterans Administration at the time of a qualifying temporary appointment effected within the year immediately preceding the conversion.

(b) *Tenure on conversion.* (1) Except as provided in subparagraph (2) of this paragraph, a person converted under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee if excepted from the service requirement for career tenure by § 315.201(c).

(c) *Acquisition of competitive status.* A person converted under paragraph (a) of this section acquires a competitive status automatically on completion of probation.

(5 U.S.C. 3112)

PART 316—TEMPORARY AND TERM EMPLOYMENT

(2) Part 316 is amended by adding a new subparagraph (4) to paragraph (c) of § 316.302, and by amending subparagraph (4) and adding subparagraph (5) to § 316.402(b), as follows:

§ 316.302 Selection of term employees.

(a) Except as provided in paragraphs (b) and (c) of this section, when making a term appointment an agency shall select an eligible from a register.

(b) The Office may authorize an agency to make term appointments outside a register when there are insufficient eligibles on the appropriate register.

(c) An agency may give a term appointment without regard to the existence of an appropriate register to:

(1) A person with eligibility for reinstatement;

(2) A veteran, as defined in section 2011(2)(A) of title 38, United States Code, who:

(i) Served on active duty in the Armed Forces of the United States between August 5, 1964 and May 7, 1975;

(ii) Completed no more than 14 years of education, unless compensably disabled or discharged because of service-connected disabilities, in which case the 14-year educational requirement does not apply; and

(iii) Is qualified to perform the duties of the position. An appointment under this subparagraph may be made only to a position at GS–7 or below, or equivalent in another pay system, without time limitation after separation from the military service, but not after September 30, 1981. A veteran who is an applicant for a position at GS–3 or equivalent, and below under this subparagraph is deemed qualified to perform the duties of the position on the basis of the veteran's civilian and military service;

(3) A person eligible for career or career-conditional appointment under §§ 315.601, 315.605, or 315.606 of this chapter;

(4) A former term employee of the agency who left prior to the expiration of his or her appointment. Reappointment must be to a position covered by the same term authority under which the individual previously served, and service under such reappointment may not exceed the expiration date of the original term appointment;

(5) A disabled veteran who has been retired from active military service with a disability rating of 30 percent or more, or has been rated by the Veterans Administration within the preceding year as having a compensable service-

connected disability of 30 percent or more.

* * * * *

§ 316.402 Authorities for temporary appointments.

(a) *General rule.* An agency may make and extend a temporary limited appointment only with specific authorization from the Office, except under the conditions published by the Office in the Federal Personnel Manual or as provided in paragraph (b) of this section.

(b) *Noncompetitive temporary limited appointments.* An agency may give a temporary limited appointment without regard to the existence of an appropriate register to:

(1) A person with eligibility for reinstatement;

(2) A person eligible for career or career-conditional appointment under §§ 315.601, 315.605, or 315.606 of this chapter;

(3) A former temporary employee of the agency who was originally appointed from a register, subject to the conditions published in the Federal Personnel Manual;

(4) A veteran or disabled veteran as defined in section 2011(2)(A) of title 38, United States Code, who:

(i) Served on active duty in the Armed Forces of the United States between August 5, 1964 and May 7, 1975;

(ii) Completed no more than 14 years of education, unless compensably disabled or discharged because of service-connected disabilities, in which case the 14-year educational requirement does not apply; and

(iii) Is qualified to perform the duties of the position. An appointment under this subparagraph may be made only to a position at GS–7 or below, or equivalent in another pay system, without time limitation after separation from the military service, but not after September 30, 1981. A veteran who is an applicant for a position at GS–3 or equivalent, and below under this subparagraph is deemed qualified to perform the duties of the position on the basis of the veteran's civilian and military service; or

(5) A disabled veteran who has been retired from active military service with a disability rating of 30 percent or more, or has been rated by the Veterans' Administration within the preceding year as having a compensable service-connected disability of 30 percent or more.

(5 U.S.C. 3312)

PART 410—TRAINING

(3) Part 410 is amended by adding a new paragraph (d) to § 410.301. As revised, § 410.301 reads as follows:

§ 410.301 Scope and general conduct of training programs.

(a) The head of an agency shall determine the policies which are to govern the training of employees of the agency. These policies shall be set forth in writing and include a statement of the broad purposes for which training will be given and of the assignment of responsibilities for seeing that these purposes are achieved.

(b) The head of an agency also shall take such administrative action as is necessary to assure that:

(1) Plans and programs are developed to meet the short- and long-range training needs of the agency;

(2) Priorities are established for the training programs of the agency;

(3) Provision is made for the use of funds and staff hours in accordance with established priorities, for the training programs of the agency;

(4) Employee self-development is fostered through a work environment in which self-development is encouraged, self-study materials are reasonably available, and self-initiated improvement in performance is recognized; and

(5) Information with respect to the general conduct of the training program of the agency is available to enable the Office, the President, and Congress to discharge their respective responsibilities under chapter 41 of title 5, United States Code.

(c) Training programs established by the agencies under chapter 41 of title 5, United States Code, to the maximum extent feasible:

(1) Be based on short- or long-range needs, existing or reasonably foreseeable;

(2) Meet as many of these needs as possible, priority considered;

(3) Use work assignment flexibility to provide experience to promote employee growth for the purpose of increasing the quality and quantity of work produced; and

(4) Be integrated with other personnel management and operating activities.

(d) As provided in subsection (b) of section 4103 of title 5, United States Code, an agency may train any employee of the agency to prepare the employee for placement in another agency when the following conditions are met:

(1) The head of the agency must determine that the employee will otherwise be separated under conditions which would entitle the employee to severance pay under section 5595 of title 5, United States Code;

(2) Before undertaking any training under this section, the head of the agency shall obtain verification from the Office that there exists a reasonable expectation of placement in another agency;

(3) In selecting an employee for training under this section, the head of the agency shall consider:

(i) The extent to which the current skills, knowledge, and abilities of the employee may be utilized in the new position;

(ii) The employee's capability to learn skills and acquire knowledge and abilities needed in the new position; and

(iii) The benefits to the Government which would result from retaining the employee in the Federal service.

(5 U.S.C. 4103)

PART 550—PAY ADMINISTRATION (GENERAL)

(4) Part 550 is amended by revising §§ 550.601, and 550.602 and 550.603 and adding § 550.604, as follows:

§ 550.601 Scope.

(a) *Applicability.* This subpart and section 5532 of title 5, United States Code, apply in determining the entitlement to retired or retainer pay of a member or former member of a uniformed service when employed in a position.

(b) *Coverage.* This subpart and section 5532 of title 5, United States Code, apply to each department and agency (including each corporation owned or controlled by the Government of the United States and including nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces) in the legislative, judicial, and executive branches of the Government of the United States and to the government of the District of Columbia.

§ 550.602 Definitions.

In this subpart: (a) "Member", "position", and "retired or retainer pay" have the meanings given those terms by section 5531 of title 5, United States Code.

(b) "Uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

(c) "Officer" means commissioned or warrant officer.

§ 550.603 Exceptions to reduction in retired or retainer pay.

(a) Under conditions set forth in the Federal Personnel Manual, an agency may make exception to the restrictions in 5 U.S.C. 5532(b), without regard to the provisions of 5 U.S.C. 5532(c) and (e), when the exception is warranted because of special or emergency employment needs which otherwise cannot be readily met. Such exceptions shall apply while the individual for whom the exception was granted continues to serve in the same position. This subsection applies only to:

(1) Any retired officer of a regular component of the uniformed services who was receiving retired pay on or before January 11, 1979; or

(2) Any individual employed in a position on October 13, 1978, so long as the individual continues to hold any such position (disregarding any break in service of 3 days or less) if the individual, on that date, would have been entitled to retired or retainer pay but for the fact that the individual did not satisfy any applicable age requirement.

(b) For appointments not covered by paragraph (a) of this section, the Office may, during the period until January 11, 1984, authorize exceptions to the restrictions in 5 U.S.C. 5532(a), (b), and (c) only when necessary to meet special or emergency employment needs which result from a severe shortage of well qualified candidates in positions of medical officers which otherwise cannot be readily met. Such exception granted by the Office with respect to any individual shall terminate upon a break in service of 3 days or more.

§ 550.604 Administrative responsibilities.

(a) *Uniformed services pay centers.* Uniformed services pay centers are responsible for determining the amount of military retired or retainer pay to be withheld.

(b) *Employing agencies.* Federal agencies are responsible for notifying the appropriate uniformed service pay center concerning the Federal civilian pay of retired members according to instructions provided in the Federal Personnel Manual.

(5 U.S.C. 5532)

PART 831—RETIREMENT

(5) Part 831 is amended by revising § 831.109, as follows:

§ 831.109 Major reorganization, reduction in force, or transfer of function.

Determinations of major reorganization, major reduction in force, or major transfer of function for purposes of early optional retirement under section 8336(d)(2) of title 5, United States Code, as amended, will be made by the Office of Personnel Management only after receipt of written request to make the determinations from the agency, or his or her designee.

(5 U.S.C. 8336(d)(2))

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-23572 Filed 7-30-79; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 359

Removal, Reinstatement, and Guaranteed Placement in the Senior Executive Service; Interim Regulations

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with comments invited for consideration in final rulemaking.

SUMMARY: These interim regulations implement Sec. 404 of Title IV of the Civil Service Reform Act of 1978. They provide for the removal of a career appointee from the Senior Executive Service either during probationary period or for less than fully successful executive performance. They also provide for placement in other personnel systems of certain persons who are removed from the Senior Executive Service.

DATES: Effective Date: July 31, 1979 and until final regulations are issued. Comment Date: Written comments will be considered if received no later than October 1, 1979.

ADDRESS: Send written comments to the Associate Director, Executive Personnel and Management Development, Office of Personnel Management, Room 6R48, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Ann Ugelow, (202) 632-6820.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(d)(3) of title 5, U.S.C., the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to provide continuity of operations and to give immediate and timely effect to the appropriate provisions of the Civil Service Reform Act of 1978.

A new Part 359 is being added to Title 5, Code of Federal Regulations to cover removal (other than an action subject to Part 752), reinstatement, and guaranteed placement in the Senior Executive Service. The subparts of Part 359 being issued now consist of: (1) The statutory requirements for removal (other than an action subject to Subchapter V of Chapter 75 of title 5, United States Code), reinstatement, and guaranteed placement in the Senior Executive Service, as found in Section 404 of title IV of the Civil Service Reform Act of 1978; and (2) the regulations which implement the removal and placement requirements of Section 404.

Regulations to implement the reinstatement requirements will be issued at a later date.

Accordingly, the Office of Personnel Management is adding interim regulations to Chapter I, 5 CFR Part 359, as set forth below:

PART 359—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

Subpart A—Principal Statutory Requirements

Sec.

359.101 Principal Statutory Requirements.

Subpart B—General Provisions

359.201 Regulatory Requirements.

359.204 Definitions.

Subpart C—[Reserved]

Subpart D—Removal of Career Appointees During Probation

359.401 Removal: Unacceptable Performance or Conduct.

359.402 Removal: Conditions Arising before Appointment.

359.403 Restrictions: Removal during Probation.

359.405 Appeals: Removal during Probation.

Subpart E—Removal of Career Appointees for Less Than Fully Successful Executive Performance

359.501 Removal: Causes: Less Than Fully Successful Executive Performance.

359.502 Removal: Procedures: Less Than Fully Successful Executive Performance.

359.503 Restrictions: Mandatory Removal.

359.505 Appeals: Removal for Less Than Fully Successful Executive Performance.

Subpart F—Removal of Other Than Career Appointees

359.601 Removal: Other Than Career Appointees.

Subpart G—Guaranteed Placement

359.701 Placement Rights: Removal During Probation.

359.702 Placement Rights: Removal for Less Than Fully Successful Executive Performance.

Subpart H—[Reserved]

Subpart I—Reinstatement

359.905 Reinstatement: Restrictions.

Authority: 5 U.S.C. 1302, Pub. L. 95-454.

Subpart A—Principal Statutory Requirements

§ 359.101 Principal statutory requirements.

This subpart sets forth for the benefit of the user the statutory requirements governing removal (other than an action subject to Subchapter V of Chapter 75 of title 5, United States Code), reinstatement, and guaranteed placement with regard to the Senior Executive Service. (5 U.S.C. 3591–3595)

"§ 3591. Definitions

"For the purpose of this subchapter, 'agency', 'Senior Executive Service position', 'senior executive', 'career appointee', 'limited term appointee', 'limited emergency appointee', 'noncareer appointee', and 'general position' have the meanings set forth in section 3132(a) of this title.

"§ 3592. Removal from the Senior Executive Service

"(a) Except as provided in subsection (b) of this section, a career appointee may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

"(1) during the 1-year period of probation under section 3393(d) of this title, or

"(2) at any time for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title,

except that in the case of a removal under paragraph (2) of this subsection the career appointee shall, at least 15 days before the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board at which the career appointee may appear and present arguments, but such hearing shall not give the career appointee the right to initiate an action with the Board under section 7701 of this title, nor need the removal action be delayed as a result of the granting of such hearing.

"(b)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

"(A) within 120 days after an appointment of the head of the agency; or

"(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

"(i) is a noncareer appointee; and

"(ii) has the authority to remove the career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to—

"(A) any removal under section 4314(b)(3) of this title; or

"(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

"(c) A limited emergency appointee, limited term appointee, or noncareer appointee may be removed from the service at any time.

"§ 3593. Reinstatement in the Senior Executive Service

"(a) A former career appointee may be reinstated, without regard to section 3393 (b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified if—

"(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

"(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43 of this title.

"(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

"§ 3594. Guaranteed placement in other personnel systems

"(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

"(b) A career appointee—

"(1) who has completed the probationary period under section 3393(d) of this title; and

"(2) who is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

"(c)(1) For purposes of subsections (a) and (b) of this section—

"(A) the position in which any career appointee is placed under such subsections shall be a continuing position at GS–15 or above of the General Schedule, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

"(B) any career appointee placed under subsection (a) or (b) of this section shall be entitled to receive basic pay at the highest of—

"(i) the rate of basic pay in effect for the position in which placed;

"(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

"(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b) of this section; and

"(C) the placement of any career appointee under subsection (a) or (b) of this section may not be made to a position which would cause the separation or reduction in grade of any other employee.

"(2) An employee who is receiving basic pay under paragraph (1)(B)(ii) or (iii) of this subsection is entitled to have the basic pay rate of the employee increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) of this section until the rate is equal to the rate in effect under paragraph (1)(B)(i) of this subsection for the position in which the employee is placed.

"§ 3595. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.".

Subpart B—General Provisions

§ 359.201 Regulatory requirements.

Subparts B through I contain the regulations of the Office of Personnel Management which implement subchapter V of chapter 35 of title 5, United States Code.

§ 359.204 Definitions.

"Agency," "Senior Executive Service position," "senior executive," "career appointee," "limited term appointee," "limited emergency appointee," "noncareer appointee," and "general position" are defined in 5 U.S.C. 3132(a).

"Probationary period" means the 1-year probation required by 5 U.S.C. 3393(d) upon initial career appointment to the Senior Executive Service.

Subpart C—[Reserved]

Subpart D—Removal of Career Appointees During Probation

§ 359.401 Removal: Unacceptable performance or conduct.

(a) *Actions covered.* This section covers the removal of a career appointee from the Senior Executive Service during probationary period for unacceptable executive performance or conduct.

(b) *Procedures.* The agency shall notify the career appointee in writing prior to the effective date of the action. The notice shall, as a minimum—

(1) State the inadequacies of the appointee's executive performance or conduct;

(2) State whether the appointee has placement rights under § 359.701 and, if so, identify the position to which the appointee will be assigned; and,

(3) Show the effective date of the action.

§ 359.402 Removal: Conditions arising before appointment.

(a) *Actions covered.* This section covers the removal of a career appointee from the Senior Executive Service during the probationary period based in whole or in part on conditions arising before the appointment.

(b) *Procedures.* The agency shall give the career appointee an advance notice stating the specific reasons for the removal. The appointee shall be given a reasonable time to reply. The agency shall give the appointee a written decision showing the reasons for the action and the effective date. When appropriate, the notice of decision shall state the appointee's placement rights under § 359.701 and identify the position to which the appointee will be assigned. The notice of decision shall be given to the appointee at or before the time the action will be made effective.

§ 359.403 Restriction: Removal during probation.

(a) A removal from the Senior Executive Service under § 359.401 or § 359.402 may not be made effective within 120 days after—

(1) The appointment of a new agency head; or

(2) The appointment in the agency of the career appointee's most immediate supervisor who—

(i) Is a noncareer appointee; and

(ii) Has the authority to remove the career appointee.

(b) This restriction does not apply to a disciplinary action initiated before the appointment of a new agency head or the appointment of the career appointee's most immediate noncareer supervisor.

§ 359.405 Appeals: Removal during probation.

(a) An action taken under § 359.401 or § 359.402 is not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

(b) A violation of the restrictions in § 359.403 is a prohibited personnel practice within the meaning of 5 U.S.C. 2302. An allegation of such violation may be submitted by the appointee to the Special Counsel of the Merit Systems Protection Board.

Subpart E—Removal of Career Appointees for Less Than Fully Successful Executive Performance

§ 359.501 Removal: Causes: less than fully successful executive performance.

(a) *Employees covered.* This section covers:

(1) Any career appointee who has completed the probationary period in the Senior Executive Service; and

(2) Any career appointee who is not required to serve a probationary period in the Senior Executive Service.

(b) *Evaluation of executive performance.* The agency shall appraise the performance of each career appointee in accordance with a performance appraisal system established by the agency under subchapter II of chapter 43 of title 5, United States Code.

(c) *Optional removal from the Senior Executive Service.* The agency may remove a career appointee from the Senior Executive Service after the appointee has been given one unsatisfactory rating under the agency's performance appraisal system.

(d) *Mandatory removal from the Senior Executive Service.* The agency shall remove a career appointee from the Senior Executive Service after:

(1) The appointee has been given two annual summary ratings of unsatisfactory under the agency's performance appraisal system within five consecutive years; or

(2) The appointee has been given two annual summary ratings of less-than-fully-successful under the agency's performance appraisal system within three consecutive years.

§ 359.502 Removal: Procedures: less than fully successful executive performance.

(a) *Notice.* The agency shall notify the career appointee in writing at least 30 calendar days before the effective date of the action. The notice shall advise the appointee of—

(1) The basis for the action;

(2) The appointee's placement rights under § 359.702 and the position to which the appointee will be assigned;

(3) The appointee's right to request an informal hearing from the Merit Systems Protection Board;

(4) The effective date of the removal action; and

(5) When applicable, the appointee's eligibility for immediate retirement under 5 U.S.C. 8336(h).

(b) *Informal hearing.* (1) A career appointee being removed from the Senior Executive Service under this section shall, at least 15 days before the effective date of the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board. The appointee shall submit the request for an informal hearing to the Merit Systems Protection Board. This request may be made at any time after the appointee has received the notice described in paragraph (a) of this section, but no later than 15 days before the effective date of action. The informal hearing shall be conducted in accordance with the regulations and procedures established by the Merit Systems Protection Board.

(2) Neither the granting nor the conduct of this informal hearing shall provide a basis for appeal to the Merit Systems Protection Board under 5 U.S.C. 7701. The removal action need not be delayed as a result of the granting of such informal hearing.

§ 359.503 Restrictions: Mandatory removal.

A removal from the Senior Executive Service under § 359.501(d)(2) may not be made effective within 120 days after—

(a) The appointment of a new agency head; or

(b) The appointment in the agency of the career appointee's most immediate supervisor who—

(1) Is a noncareer appointee; and

(2) Has the authority to remove the career appointee.

§ 359.505 Appeals: Removal for less than fully successful executive performance.

(a) An action taken under § 359.501 is not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

(b) A violation of the restrictions in § 359.503 is a prohibited personnel practice within the meaning of 5 U.S.C. 2302. An allegation of such violation may be submitted by the appointee to the Special Counsel of the Merit Systems Protection Board.

Subpart F—Removal of Other Than Career Appointees

§ 359.601 Removal: Other than career appointees.

(a) *Coverage.* This section covers the removal from the Senior Executive Service of limited emergency appointees, limited term appointees, and noncareer appointees.

(b) *Authority.* The agency may remove an appointee subject to this section at any time.

(c) *Notice.* The agency shall notify the appointee in writing prior to the effective date of the removal.

(d) *Placement rights.* An appointee covered by this section is not entitled to

the placement rights provided for career appointees by 5 U.S.C. 3594.

(e) *Appeals.* Actions taken under this section are not appealable to the Merit Systems Protection Board under 5 U.S.C. 7701.

Subpart G—Guaranteed Placement

§ 359.701 Placement rights: Removal during probation.

(a) *Coverage.* This section covers career appointees—

(1) Who are removed from the Senior Executive Service during probation for reasons other than misconduct, neglect of duty or malfeasance; and

(2) Who at the time of appointment to the Senior Executive Service held a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office).

(b) *Placement.* (1) An appointee covered by this section is entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency which is—

(i) A continuing position at GS–15 or above, or equivalent;

(ii) Of tenure equivalent to that of the appointment held at the time of appointment to the Senior Executive Service; and

(iii) A position for which the appointee meets the qualifications requirements.

(2) The agency taking the removal action shall be responsible for placing the appointee in an appropriate position within the agency, or for arranging a transfer to an appropriate position in another agency, in which case, the transfer must be mutually acceptable to the appointee and the gaining agency.

(c) *Restriction.* Placement of an appointee under this section shall not cause the separation or reduction in grade of any other employee.

(d) *Pay.* A career appointee placed under this section shall be entitled to receive basic pay at the highest of:

(1) The rate of basic pay in effect for the position in which he or she is being placed;

(2) The rate of basic pay currently in effect for the position which the appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

(3) The rate of basic pay in effect for the appointee immediately before his or her removal from the Senior Executive Service.

§ 359.702 Placement Rights: Removal for less than fully successful executive performance.

(a) *Coverage.* This section covers career appointees—

(1) Who have completed the required probationary period under the Senior Executive Service or who are not required to serve a probationary period; and

(2) Who are removed from the Senior Executive Service for less than fully successful executive performance.

(b) *Placement.* (1) An appointee covered by this section is entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency which is—

(i) A continuing position at GS–15 or above, or equivalent; and

(ii) A position for which the appointee meets the qualifications requirements.

(2) In addition, an appointee covered by this section who at the time of appointment to the Senior Executive Service held a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office) is entitled to be placed in a position of tenure equivalent to that of the appointment held at the time of appointment to the Senior Executive Service. This requirement does not apply—

(i) If the agency taking the removal action does not have positions of equivalent tenure; and/or

(ii) If the appointee is willing to accept a position having a different tenure.

(3) The agency taking the removal action shall be responsible for placing the appointee in an appropriate position within the agency, or for arranging a transfer to an appropriate position in another agency, in which case, the transfer must be mutually acceptable to the appointee and the gaining agency.

(c) *Restriction.* Placement of an appointee under this section shall not cause the separation or reduction in grade of any other employee.

(d) *Pay.* A career appointee placed under this section shall be entitled to receive basic pay at the highest of:

(1) The rate of basic pay in effect for the position in which he or she is being placed;

(2) The rate of basic pay currently in effect for the position which the appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

(3) The rate of basic pay in effect for the appointee immediately before his or her removal from the Senior Executive Service.

Subpart H—[Reserved]

Subpart I—Reinstatement

§ 359.905 Reinstatement: Restrictions.

An individual whose last appointment to the Senior Executive Service ended in a removal action taken under §§ 359.401, 359.402 or § 359.501 shall not be eligible for noncompetitive reinstatment to a career appointment in the Senior Executive Service. Such individual may be given a career appointment in the Senior Executive Service only if selected in accordance with the merit staffing requirements established by the Office.

Office of Personnel management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-23570 Filed 7-30-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 752

Adverse Actions; Interim Regulations

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with comments invited for consideration in final rulemaking.

SUMMARY: These interim regulations implement Section 411 of Title IV of the Civil Service Reform Act of 1978. They apply to the following adverse actions against career appointees in the Senior Executive Service: Suspension for more than 14 days and removal from the civil service taken for such cause as will promote the efficiency of the service. They do not apply to removals from the Senior Executive Service covered under Part 359 of these regulations.

DATES: Effective Date: July 31, 1979 and until final regulations are issued.

Comment Date: Written comments will be considered if received no later than October 1, 1979.

ADDRESS: Send written comments to the Associate Director, Executive Personnel and Management Development, Office of Personnel Management, Room 6R48, 1900 E.Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Ann Ugelow, (202) 632-6820.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(d)(3) of title 5, U.S.C., the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to provide continuity of operations and to give immediate and timely effect to the appropriate provisions of the Civil Service Reform Act of 1978. Two new Subparts of Part 752 are being added to

Title 5, Code of Federal Regulations to cover the following adverse actions against career appointees in the Senior Executive Service: suspension for more than 14 days and removal from the civil service taken for such cause as will promote the efficiency of the service. They do not apply to removal from the Senior Executive Service covered under Part 359 of these regulations.

The two subparts of Part 752 being issued consist of:

(1) Subpart E sets forth the statutory requirements as found in Section 411 of title IV of the Civil Service Reform Act of 1978; and

(2) Subpart F sets forth the regulations which implement the statutory requirements.

Accordingly, the Office of Personnel Management is adding Subparts E and F as interim regulations to Chapter I, 5 CFR Part 752, as set forth below:

PART 752—ADVERSE ACTIONS

* * * * *

Subpart E—Principal Staturory Requirements for Taking Adverse Actions Under the Senior Executive Service

Sec.
752.501 Principal Staturory Requirements.

Subpart F—Regulatory Requirements for Taking Adverse Actions Under The Senior Executive Service

752.601 Coverage.
752.602 Defintions.
752.603 Standard for Action.
752.604 Procedures: Adverse Actions.
752.605 Appeal rights: Adverse Actions.
752.606 Agency Records.

Authority: 5 U.S.C. 1302, Pub. L. 95-494.

Subpart E—Principal Statutory Requirements for Taking Adverse Actions Under the Senior Executive Service

§ 752.501 Principal statutory requirements.

This subpart sets forth for the benefit of the user the statutory requirements of subchapter V of Chapter 75 for suspension for more than 14 days and removal from the civil service. (5 U.S.C. 7541–7543)

"§ 7541. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means a career appointee in the Senior Executive Service who—

"(A) has completed the probationary period prescribed under section 3393(d) of this title; or

"(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

"(2) 'suspension' as the meaning set forth in section 7501(2) of this title.

"§ 7542. Actions covered

"This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1206 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 of this title.

"§ 7543. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

"(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

"(1) at least 30 days' advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

"(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

"(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.".

Subpart F—Regulatory Requirements for Taking Adverse Actions Under the Senior Executive Service

Authority: 5 U.S.C. 7543.

§ 752.601 Coverage.

(a) *Adverse actions covered.* This subpart applies to suspensions for more than 14 days and removals from the civil service as set forth in 5 U.S.C. 7542.

(b) *Exclusions.* This subpart does not apply to actions under 5 U.S.C. 1206, 3592, and 7532.

(c) *Employees covered.* This section covers a career appointee—

(1) Who has completed the probationary period in the Senior Executive Service;

(2) Who is not required to serve a probationary period in the Senior Executive Service; or

(3) Who was covered under 5 U.S.C. 7511 immediately before appointment to the Senior Executive Service.

§ 752.602 Definitions.

In this subpart,

(a) *Career appointee* has the meaning given in 5 U.S.C. 3132(a).

(b) *Day* means calendar day.

(c) *Suspension* has the meaning given in 5 U.S.C. 7501(2).

§ 752.603 Standard for action.

(a) An agency may take adverse action under this subpart only as set forth in 5 U.S.C. 7543(a).

(b) An agency may not take an adverse action against a career appointee on the basis of any reason prohibited by 5 U.S.C. 2302.

§ 752.604 Procedures: Adverse actions.

(a) *Statutory entitlements.* A career appointee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7543(b).

(b) *Notice of proposed action.* (1) The notice of proposed action shall inform the career appointee of his or her right to review the material which is relied on to support the reasons for action given in the notice.

(2) The agency may not use material which cannot be disclosed to the appointee or to his or her representative or designated physician under § 297.108(c)(1) of Part 297 of this title to support the reasons in the notice.

(c) *Appointee's answer.* (1) The agency shall give the career appointee a reasonable amount of time to review the material relied on to support its proposal and to prepare an answer and to secure affidavits, if he or she is otherwise in an active duty status.

(2) The agency shall designate an official to hear the career appointee's oral answer who has authority either to make or recommend a final decision on the proposed adverse action.

(3) The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides one in its regulations in accordance with § 752.604(g).

(d) *Exceptions.* (1) 5 U.S.C. 7543(b)(1) authorizes an exception to the 30 day advance written notice when the crime provision is invoked. The agency may require the career appointee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer

within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action, the agency may place the career appointee in a nonduty status with pay for such time, not to exceed ten days, as is necessary to effect the action.

(2) The 30 days' advance written notice is not required for placing a career appointee in a nonduty status with pay during the notice period of a removal or a suspension for more than 14 days when the circumstances are such that retention of the career appointee in an active duty status:

(i) May be injurious to the appointee, his or her fellow workers, or the general public;

(ii) May result in damage to government property; or

(iii) May, because of the nature of the appointee's offense, reflect unfavorably on the public perception of the Federal service. The agency shall include in the notice the reasons for not retaining the appointee in an active duty status during the notice period of a removal or a suspension for more than 14 days. The agency may require the appointee to furnish any answer to the proposed action and affidavits and other documentary evidence in support of the answer within such time as under the circustances would be reasonable, but not less than seven days. When the circumstances require immediate action, the agency may place the appointee in a nonduty status with pay for such time, not to exceed ten days.

(e) *Representation.* (1) 5 U.S.C. 7543(b)(3) provides that an appointee covered by this part is entitled to be represented by an attorney or other representative.

(2) An agency may disallow as an appointee's representative:

(i) an individual whose activities as a representative would cause a conflict of interest or positon;

(ii) an employee of the agency whose release from his or her official position would give rise to unreasonable costs; or

(iii) An employee of the agency whose priority work assignments preclude his or her release.

(f) *Agency decision.* In arriving at its written decision, the agency shall consider only the reasons specified in the notice of proposed action and shall consider any reply of the career appointee or his or her representative made to a designated official. The agency shall deliver the notice of decision to the appointee at or before the time the action will be effective. The notice of decision shall inform the appointee of his or her appeal rights.

(g) *Hearing.* Under 5 U.S.C. 7543(c), the agency may in its regulations provide a hearing in place of or in addition to the opportunity for written and oral reply.

§ 752.605 Appeal rights: Adverse actions.

Under the provisions of 5 U.S.C. 7543(d), a career appointee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

§ 752.606 Agency records.

The agency shall maintain copies of the adverse action record items specified in 5 U.S.C. 7543(e) and shall furnish them upon request as required by that subsection.

Office of Personnel Management.
Beverly M. Jones,
Issuance Systems Manager.

[FR Doc. 79-23571 Filed 7-30-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 772

Appeals to the Commission; Cross Reference

Cross Reference: For a document affecting Part 772 of Chapter I, Title 5 of the Code of Federal Regulations, see ———, FR Doc. 79-23736 appearing under Merit Systems Protection Board in the Rules and Regulations section of this issue. Refer to the table of contents at the front of this issue to find the correct page number.

BILLING CODE 6325-01-M

5 CFR Parts 1200, 1201, and 1202

Organization and Procedure; Correction

AGENCY: Merit Systems Protection Board.

ACTION: Final Rules; Correction.

SUMMARY: This document corrects the document entitled Organization and Procedure published in the Federal Register on June 29, 1979, in Volume 44 at 38342.

EFFECTIVE DATE: June 30, 1979.

FOR FURTHER INFORMATION CONTACT: Alan Greenwald or Deborah House, (202) 653-7101.

CORRECTION: In **SUPPLEMENTARY INFORMATION,** immediately after the last sentence in the first column add:

Also superseded by these regulations is Part 772 of Title 5.

By Order of the Board.
Dated: July 25, 1979.
Ruth T. Prokop,
Chairwoman.

[FR Doc. 79-23736 Filed 7-30-79; 8:45 am]
BILLING CODE 6325-20-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 792

[Amdt. 2]

Normal Crop Acreage and Set-Aside Acreage

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Final rule.

SUMMARY: This rule corrects a reference and clarifies certain provisions on normal crop acreage (NCA), set-aside designation and use, and cross-compliance. It also gives authority to the State committee to approve cover or practices for set-aside. These changes are needed to improve the administration of the program.

EFFECTIVE DATE: July 31, 1979.

FOR FURTHER INFORMATION CONTACT: Charles J. Riley, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013 (202) 447-7633.

SUPPLEMENTARY INFORMATION: The regulations at 7 CFR Part 792 are amended to:

1. Provide that the normal crop acreage for even years shall be the acreage planted in 1976 for farms with odd-even rotations.

2. Provide that special cover and practices may be approved for set-aside acreage by the State committee, with concurrence of the State conservationist, Soil Conservation Service.

3. Provide that loans, purchases, and payments with respect to sugar are not affected by cross compliance provisions.

4. Add provisions for the substitution of failed acreage for set-aside.

5. Make other corrections needed for the 1979 program year.

Accordingly, 7 CFR Part 792 is amended as follows:

§ 792.1 [Amended]

1. Section 792.1 is amended by revising the first sentence to read as follows: "This part provides the rules for determining the farm normal crop acreage and for designation, care and

use of acreage set aside under the Feed Grain, Upland Cotton and Wheat Programs for crop years 1978–1981, Part 713 of this chapter, as amended; the Rice Program for crop years 1978–1981, Part 730 of this chapter, as amended; and all other programs to which this part is made applicable by individual program regulations."

§ 792.2 [Amended]

2. Section 792.2 is amended by inserting the parenthetical phrase "(1976 for use in even years for farms with odd-even rotations)" between the year "1977" and the word "to" in the first sentence.

3. Section 792.3 is amended by revising paragraphs (a), (b)(3), and (b)(7) to read as follows:

§ 792.3 Designation of set-aside acreage.

(a) *Land eligible for designation.* Subject to the provisions of paragraph (b) of this section, the land eligible for designation as set-aside acreage must be cropland that was:

(1) Tilled in one or more of the previous 3 years in the production of a crop for other than hay or pasture, or

(2) Determined by the county committee to have been devoted in all of the previous 3 years to a hay crop (for hay, pasture, green chop, silage, or processing) that was in a normal rotation pattern with a small grain or row crop, or

(3) Designated as set-aside or voluntary diversion in any one of the previous 3 years for which a set-aside program was in effect and was eligible when designated.

(b) * * *

(3) Turn rows, drainage ditches, sod waterways constructed before the fall of the previous year, wet low-lying areas, droughty knobs or banks, areas rejected by the county committee because of their small size or shape, or land in an orchard or vineyard (except when qualifying under § 792.4(a)(3)) and strips in skiprow planting patterns.

* * * * *

(7) Land planted for harvest as grain for a State or National wildlife refuge.

4. Section 792.4 is amended by revising the introductory language of paragraph (a) and paragraph (c), by revising paragraphs (a) (1), (2) and (3), and by adding a new paragraph (a)(6) to read as follows:

§ 792.4 Care of set-aside acreage.

(a) *Approved cover and practices.* The set-aside shall be devoted as soon as practical after the beginning of the normal period for planting spring crops to one or more of the following approved covers or practices, or to other cover or practices approved by the State committee, with concurrence of the State conservationist, Soil Conservation Service (herein called SCS), which will effectively protect the set-aside from wind and water erosion throughout the calendar year.

(1) Annual, biennial, or perennial grasses and legumes, including volunteer stands other than weeds which meet the criteria set forth by the State committee, but excluding soybeans.

(2) Small grains, including volunteer stands other than weeds which meet the criteria set forth by the State committee. Such small grains, including volunteer stands other than weeds, must be clipped (i) before midnight of the disposal date which is established by the State committee or (ii) before reaching the dough stage if no disposal date is established by the State committee.

(3) Trees or shrubs planted for erosion control, shelterbelts, or other purposes or for wildlife habitat during the current year or fall of the preceding year, provided these practices are on designated set-aside acreage otherwise eligible under § 792.3.

* * * * *

(6) Plantings for wildlife food plots or wildlife habitat, in accordance with instructions issued by the Deputy Administrator.

* * * * *

(c) *Land preparation for fall seeded crops.* Crops may be seeded on the set-aside acreage in the fall for harvest the next year. The land can be prepared in the fall and left bare only when approved by the State committee, with concurrence of the State conservationist, SCS.

5. Section 792.5 is amended by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 792.5 Use of set-aside acreage.

* * * * *

(b) *Restriction on grazing.* The set-aside acreage shall not be grazed during the six principal growing months as established by the county committee, except when approved under emergency conditions in accordance with instructions issued by the Deputy Administrator.

(c) *Special uses.* The set-aside may be used for hunting, trapping, hiking, and other noncommercial recreation uses or for temporary location of bee hives.

6. Section 792.5-a is added to read as follows:

§ 792.5-a Substitution of failed acreage for set-aside.

The acreage of crops destroyed by a natural disaster or conditions beyond the control of the producer may be substituted for the set-aside under the following conditions:

(a) The operator requests the substitution in writing and agrees that there will be no deficiency or low yield payment or planted acreage credit (under programs authorized by Parts 713 and 730 of this chapter) for the substituted acreage.

(b) The farm was in compliance with the Feed Grain, Upland Cotton, Wheat and Rice Programs (Parts 713 and 730 of this chapter) before the crop was destroyed.

(c) Cover is established on the substituted acreage to the extent required by the county committee to protect the land from wind and water erosion.

7. Section 792.6 is revised to read as follows:

§ 792.6 Cross compliance on the farm.

To qualify on the farm for loans, purchases, and payments (other than for sugar) authorized for crops included in the NCA, producers on a farm that produces one or more crops for which a set-aside requirement is in effect shall:

(a) Set aside the acreage required for each crop, and

(b) Limit the acreage of crops in the NCA to the NCA less the amount of the acreage which is required to be set aside and/or voluntarily diverted.

(Sections 101(h), 103(f), 105A and 107A of the Agricultural Act of 1949, as added by Pub. L. 95–113 (91 Stat. 913 et seq.). Section 1001 of Title X of Pub. L. 95–113 (91 Stat. 950).)

Note.—Farmers are now planting, cultivating, and harvesting their 1979 crops. They need to know the changes being made in this final rule as soon as possible. Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the Federal Register.

Further, this final rule has not been designated as "significant", and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Administrator, that the emergency nature of this final rule warrants publication without opportunity for public comment and preparation of an impact analysis statement at this time.

This final rule will be scheduled for review under provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Signed at Washington, D.C. on July 24, 1979.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-23514 Filed 7-30-79; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

7 CFR Part 1421

[CCC Grain Price Support Regulations, 1979 Crop Sorghum Supplement]

1979 Crop Sorghum Loan and Purchase Program

AGENCY: Commodity Credit Corporation, Department of Agriculture.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to set forth the (1) Final loan and purchase availability dates, (2) maturity dates, and (3) loan and purchase rates and discounts under which Commodity Credit Corporation (CCC) will extend price support on 1979 crop sorghum. This rule is needed in order to provide a price support program for sorghum. This rule will enable eligible sorghum producers to obtain loans and purchases on their eligible 1979 crop sorghum.

EFFECTIVE DATE: July 31, 1979.

ADDRESS: Price Support and Loan Division, ASCS, U.S. Department of Agriculture, 3727 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Merle Strawderman, ASCS, (202) 447-7973.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the Federal Register on August 23, 1978, 43 FR 37458 stating that the Department of Agriculture proposed to make determinations and issue regulations relative to a loan and purchase program for the 1979 crop of feed grains including sorghum. Such determinations included determining loan and purchase rates and other related program provisions. Thirty-seven recommendations were received concerning the loan and purchase program for sorghum. After considering applicable factors, it has been determined that the loan and purchase rates for 1979 crop sorghum on a national average will be $3.39 per hundredweight.

Producers who wish to secure loans can do so by contacting their local Agricultural Stabilization and Conservation Service county office or Agricultural Service Center.

Final Rule

The General Regulations Governing Price Support for 1978 and Subsequent Crops, and any amendments thereto and the 1978 and Subsequent Crops Sorghum Loan and Purchase Regulations, and any amendments thereto in this Part 1421 are further supplemented for the 1979 crop of sorghum. Accordingly, the regulations in 7 CFR § 1421.235 through 1421.238 and the title of the subpart are revised to read as provided below effective as to the 1979 crop of sorghum. The material previously appearing in these sections shall remain in full force and effect as to the crops to which it is applicable.

Subpart—1979 Crop Sorghum Loan and Purchase Program

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15. U.S.C. 714 b and c); Secs. 105A, 401, 63 Stat. 1051, as amended (7 U.S.C. 1444c, 1421).

Subpart—1979 Crop Sorghum Loan and Purchase Program

§ 1421.235 Purpose.

This supplement contains additional program provisions which together with the provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, the 1978 and Subsequent Crops Sorghum Loan and Purchase Program regulations, and any amendments thereto, apply to loans on and purchases of the 1979 crop of sorghum.

§ 1421.236 Availability.

(a) *Loans.* Producers desiring to participate in the program through loans must request a loan on their 1979 crop of eligible sorghum on or before May 31, 1980.

(b) *Purchases.* A producer desiring to offer eligible 1979 crop sorghum not under loan for purchase must execute and deliver to the county ASCS office on or before May 31, 1980, a Purchase Agreement (Form CCC-614) indicating the approximate quantity of 1979 crop sorghum the producer will sell to CCC.

§ 1421.237 Maturity of Loans.

Loans mature on demand but not later than the last day of the ninth calendar month following the month in which the loan is disbursed.

§ 1421.238 Warehouse charges.

If storage is not provided for through loan maturity, the county office shall deduct storage charges at the daily storage rate for the storing warehouse times the number of days from the date the commodity was received or date through which storage has been provided for to the maturity.

§ 1421.239 Loan and Purchase Rates.

(a) *Basic loan and purchase rates (counties).* Basic rates per bushel for loan and settlement purposes for sorghum are established for sorghum grading U.S. No. 2 or better are as follows:

1979-Crop Sorghum Loan and Purchase—*Basic County Loan and Purchase Rates for Sorghum No. 2 or Better*

County	Rate per Cwt.
ALABAMA	
All Counties	$3.39
ARIZONA	
Apache	3.37
Cochise	3.59
Coconino	3.37
Gila	3.37
Graham	3.41
Greenlee	3.37
Maricopa	3.73
Mohave	3.65
Navajo	3.37
Pima	3.65
Pinal	3.73
Santa Cruz	3.62
Yavapai	3.37
Yuma	3.70
Wght. State Avg	3.62
ARKANSAS	
Arkansas	3.44
Ashley	3.40
Baxter	3.32
Benton	3.29
Boone	3.30
Bradley	3.39
Calhoun	3.37
Carroll	3.29
Chicot	3.40
Clark	3.38
Clay	3.46
Cleburne	3.39
Cleveland	3.40
Columbia	3.38
Conway	3.38
Craighead	3.47
Crawford	3.34
Crittenden	3.48
Cross	3.47
Dallas	3.38
Desha	3.42
Drew	3.40
Faulkner	3.39
Franklin	3.33
Fulton	3.37
Garland	3.34
Grant	3.35
Greene	3.46
Hempstead	3.37
Hot Spring	3.35
Howard	3.35
Independence	3.39
Izard	3.35
Jackson	3.44
Jefferson	3.40
Johnson	3.33
Lafayette	3.39
Lawrence	3.44
Lee	3.47

ARKANSAS

Lincoln	3.41
Little River	3.37
Logan	3.33
Lonoke	3.42
Madison	3.29
Marion	3.30
Miller	3.39
Mississippi	3.48
Monroe	3.48
Montgomery	3.33
Nevada	3.36
Newton	3.31
Ouachita	3.37
Perry	3.35
Phillips	3.47
Pike	3.35
Poinsett	3.47
Polk	3.34
Pope	3.34
Prairie	3.44
Pulaski	3.40
Randolph	3.43
St. Francis	3.47
Saline	3.35
Scott	3.34
Searcy	3.32
Sebastian	3.34
Sevier	3.35
Sharp	3.39
Stone	3.35
Union	3.38
Van Buren	3.37
Washington	3.30
White	3.42
Woodruff	3.45
Yell	3.35
Wght. State Avg	3.44

CALIFORNIA

Alameda	3.87
Amador	3.86
Butte	3.76
Calaveras	3.86
Colusa	3.80
Contra Costa	3.87
El Dorado	3.85
Fresno	3.79
Glenn	3.77
Humboldt	3.51
Imperial	3.82
Inyo	3.58
Kern	3.83
Kings	3.78
Lake	3.70
Lassen	3.55
Los Angeles	3.87
Madera	3.82
Marin	3.83
Mariposa	3.82
Mendocino	3.62
Merced	3.83
Modoc	3.54
Monterey	3.74
Napa	3.81
Orange	3.87
Placer	3.80
Plumas	3.62
Riverside	3.82
Sacramento	3.87
San Benito	3.80
San Bernardino	3.85
San Diego	3.87
San Francisco	3.87
San Joaquin	3.87
San Luis Obispo	3.71
San Mateo	3.86
Santa Barbara	3.74
Santa Clara	3.87
Santa Cruz	3.79
Shasta	3.57
Sierra	3.64
Siskiyou	3.53
Solano	3.86
Sonoma	3.82
Stanislaus	3.87
Sutter	3.80
Tehama	3.75
Tulare	3.77
Tuolumne	3.82
Ventura	3.84
Yolo	3.80
Yuba	3.79
Wght. State Avg	3.80

COLORADO

Baca	3.34
All Other Counties	3.29
Wght. State Avg	3.29

DELAWARE

All Counties	3.43

FLORIDA

All Counties	3.38

GEORGIA

All Counties	3.43

IDAHO

All Counties	3.16

ILLINOIS

Alexander	3.43
Bond	3.35
Calhoun	3.31
Clay	3.35
Clinton	3.37
Edwards	3.37
Franklin	3.38
Gallatin	3.37
Hamilton	3.39
Hardin	3.40
Jackson	3.40
Jefferson	3.37
Jersey	3.31
Johnson	3.41
Lawrence	3.33
Madison	3.37
Marion	3.38
Massac	3.42
Monroe	3.37
Perry	3.38
Pope	3.41
Pulaski	3.43
Randolph	3.38
Richland	3.34
Saint Clair	3.37
Saline	3.39
Union	3.42
Wabash	3.34
Washington	3.37
Wayne	3.37
White	3.37
Williamson	3.40
All Other Counties	3.25
Wght. State Avg	3.38

INDIANA

All Counties	3.30

IOWA

Adair	3.28
Adams	3.27
Appanoose	3.24
Audubon	3.26
Calhoun	3.21
Carroll	3.25
Cass	3.29
Clarke	3.25
Crawford	3.26
Decatur	3.26
Fremont	3.29
Greene	3.22
Guthrie	3.25
Harrison	3.28
Ida	3.23
Lucas	3.24
Madison	3.26
Marion	3.21
Mills	3.29
Monona	3.27
Monroe	3.22
Montgomery	3.29
Page	3.29
Pottawattamie	3.29
Ringgold	3.28
Sac	3.23
Shelby	3.27
Taylor	3.28
Union	3.26
Warren	3.24
Wayne	3.25
Woodbury	3.25
All Other Counties	3.17
Wght. State Avg	3.25

KANSAS

Allen	3.37
Anderson	3.38
Atchison	3.41
Barber	3.27
Barton	3.23
Bourbon	3.38
Brown	3.38

KANSAS

Butler	3.28
Chase	3.33
Chautauque	3.32
Cherokee	3.36
Cheyenne	3.20
Clark	3.27
Clay	3.29
Cloud	3.28
Coffey	3.35
Comanche	3.27
Cowley	3.28
Crawford	3.37
Decatur	3.22
Dickinson	3.28
Doniphan	3.37
Douglas	3.39
Edwards	3.23
Elk	3.32
Ellis	3.23
Ellsworth	3.25
Finney	3.24
Ford	3.27
Franklin	3.40
Geary	3.32
Gove	3.23
Graham	3.23
Grant	3.24
Gray	3.28
Greeley	3.20
Greenwood	3.33
Hamilton	3.22
Harper	3.27
Harvey	3.27
Haskell	3.25
Hodgeman	3.25
Jackson	3.39
Jefferson	3.40
Jewell	3.26
Johnson	3.40
Kearny	3.22
Kingman	3.26
Kiowa	3.25
Labette	3.36
Lane	3.21
Leavenworth	3.41
Lincoln	3.26
Linn	3.40
Logan	3.21
Lyon	3.34
McPherson	3.27
Marion	3.28
Marshall	3.33
Meade	3.26
Miami	3.40
Mitchell	3.26
Montgomery	3.36
Morris	3.32
Morton	3.26
Nemaha	3.35
Neosho	3.37
Ness	3.22
Norton	3.23
Osage	3.36
Osborne	3.25
Ottawa	3.27
Pawnee	3.23
Phillips	3.24
Pottawatomie	3.35
Pratt	3.25
Rawlins	3.21
Reno	3.25
Republic	3.28
Rice	3.25
Riley	3.33
Rooks	3.25
Rush	3.23
Russell	3.23
Saline	3.27
Scott	3.21
Sedgwick	3.27
Seward	3.26
Shawnee	3.38
Sheridan	3.23
Sherman	3.20
Smith	3.25
Stafford	3.23
Stanton	3.24
Stevens	3.26
Sumner	3.27
Thomas	3.21
Trego	3.23
Wabaunsee	3.35
Wallace	3.20
Washington	3.29
Wichita	3.21
Wilson	3.36

KANSAS	
Woodson	3.35
Wyandotte	3.41
Wght. State Avg.	3.30
KENTUCKY	
All Counties	3.38
LOUISIANA	
All Counties	3.40
MARYLAND	
All Counties	3.43
MICHIGAN	
All Counties	3.25
MINNESOTA	
All Counties	3.20
MISSISSIPPI	
All Counties	3.38
MISSOURI	
Adair	3.24
Andrew	3.37
Atchison	3.29
Audrain	3.29
Barry	3.27
Barton	3.31
Bates	3.37
Benton	3.31
Bollinger	3.40
Boone	3.28
Buchanan	3.39
Butler	3.46
Caldwell	3.39
Callaway	3.27
Camden	3.30
Cape Girardeau	3.41
Carroll	3.38
Carter	3.40
Cass	3.39
Cedar	3.30
Charlton	3.34
Christian	3.28
Clark	3.19
Clay	3.41
Clinton	3.40
Cole	3.27
Cooper	3.31
Crawford	3.30
Dade	3.27
Dallas	3.30
Daviess	3.34
De Kalb	3.34
Dent	3.33
Douglas	3.33
Dunklin	3.49
Franklin	3.33
Gasconade	3.28
Gentry	3.30
Greene	3.27
Grundy	3.33
Harrison	3.29
Henry	3.35
Hickory	3.31
Holt	3.32
Howard	3.31
Howell	3.36
Iron	3.39
Jackson	3.41
Jasper	3.30
Jefferson	3.37
Johnson	3.37
Knox	3.23
Laclede	3.30
Lafayette	3.39
Lawrence	3.27
Lewis	3.21
Lincoln	3.31
Linn	3.31
Livingston	3.37
MacDonald	3.27
Macon	3.28
Madison	3.40
Maries	3.28
Marion	3.23
Mercer	3.29
Miller	3.29
Mississippi	3.42
Montieau	3.27
Monroe	3.28
Montgomery	3.30
Morgan	3.31
New Madrid	3.45
Newton	3.27
Nodaway	3.32
Oregon	3.39
Osage	3.28
Ozark	3.34
Pemiscot	3.50
Perry	3.39
Pettis	3.31
Phelps	3.28
Pike	3.28
Platte	3.41
Polk	3.28
Pulaski	3.28
Putnam	3.27
Ralls	3.24
Randolph	3.29
Ray	3.41
Reynolds	3.35
Ripley	3.45
Saint Charles	3.33
Saint Clair	3.33
Saint Francois	3.37
Sainte Genevieve	3.38
Saint Louis	3.37
Saline	3.35
Schuyler	3.21
Scotland	3.19
Scott	3.41
Shannon	3.35
Shelby	3.25
Stoddard	3.43
Stone	3.28
Sullivan	3.27
Taney	3.30
Texas	3.30
Vernon	3.34
Warren	3.32
Washington	3.36
Wayne	3.43
Webster	3.27
Worth	3.30
Wright	3.29
Wght. State Avg	3.36
NEBRASKA	
Antelope	3.25
Burt	3.28
Butler	3.28
Cass	3.29
Colfax	3.27
Cuming	3.27
Dodge	3.28
Douglas	3.29
Gage	3.29
Hall	3.24
Hamilton	3.25
Jefferson	3.26
Johnson	3.29
Lancaster	3.28
Madison	3.26
Merrick	3.24
Nemaha	3.30
Otoe	3.28
Pawnee	3.30
Pierce	3.26
Platte	3.26
Polk	3.26
Richardson	3.32
Saline	3.28
Sarpy	3.29
Saunders	3.28
Seward	3.28
Stanton	3.27
Thayer	3.24
Thurston	3.27
Washington	3.29
York	3.27
All Other Counties	3.22
Wght. State Avg	3.26
NEVADA	
All Counties	3.32
NEW MEXICO	
Chaves	3.36
Curry	3.38
De Baca	3.35
Guadalupe	3.35
Harding	3.37
Hidalgo	3.41
Lea	3.38
Luna	3.41
Quay	3.38
Roosevelt	3.38
Union	3.34
All Other Counties	3.33
Wght. State Avg	3.38
NORTH CAROLINA	
All Counties	3.43
NORTH DAKOTA	
All Counties	3.15
OHIO	
All Counties	3.30
OKLAHOMA	
Adair	3.42
Alfalfa	3.39
Atoka	3.50
Beaver	3.35
Beckham	3.44
Blaine	3.45
Bryan	3.50
Caddo	3.49
Canadian	3.48
Carter	3.50
Cherokee	3.47
Choctaw	3.50
Cimarron	3.35
Cleveland	3.50
Coal	3.50
Comanche	3.49
Cotton	3.49
Craig	3.40
Creek	3.48
Custer	3.45
Delaware	3.42
Dewey	3.40
Ellis	3.39
Garfield	3.42
Garvin	3.50
Grady	3.50
Grant	3.39
Greer	3.45
Harmon	3.44
Harper	3.35
Haskell	3.48
Hughes	3.49
Jackson	3.45
Jefferson	3.50
Johnston	3.50
Kay	3.39
Kingfisher	3.45
Kiowa	3.48
Latimer	3.49
Le Flore	3.48
Lincoln	3.49
Logan	3.48
Love	3.50
McClain	3.50
McCurtain	3.48
McIntosh	3.48
Major	3.40
Marshall	3.51
Mayes	3.42
Murray	3.50
Muskogee	3.48
Noble	3.43
Nowata	3.40
Okfuskee	3.48
Oklahoma	3.49
Okmulgee	3.48
Osage	3.41
Ottawa	3.40
Pawnee	3.44
Payne	3.48
Pittsburg	3.49
Pontotoc	3.50
Pottawatomie	3.49
Pushmataha	3.50
Roger Mills	3.40
Rogers	3.42
Seminole	3.49
Sequoyah	3.47
Stephens	3.50
Texas	3.35
Tillman	3.45
Tulsa	3.47
Wagoner	3.48
Washington	3.39
Washita	3.47
Woods	3.39
Woodward	3.37
Wght. State Avg	3.40
OREGON	
All Counties	3.31
PENNSYLVANIA	
All Counties	3.43
SOUTH CAROLINA	
All Counties	3.43

SOUTH DAKOTA	
Bon Homme	3.24
Clay	3.26
Hutchinson	3.23
Lincoln	3.25
Turner	3.23
Union	3.26
Yankton	3.26
All Other Counties	3.22
Wght. State Avg	3.23
TENNESSEE	
Shelby	3.50
All Other Counties	3.38
Wght. State Avg	3.38
TEXAS	
Anderson	3.57
Andrews	3.36
Angelina	3.62
Aransas	3.70
Archer	3.46
Armstrong	3.39
Atascosa	3.62
Austin	3.67
Bailey	3.38
Bandera	3.58
Bastrop	3.57
Baylor	3.46
Bee	3.69
Bell	3.54
Bexar	3.57
Blanco	3.58
Borden	3.38
Bosque	3.50
Bowie	3.47
Brazoria	3.70
Brazos	3.61
Brewster	3.29
Briscoe	3.40
Brooks	3.68
Brown	3.48
Burleson	3.59
Burnet	3.57
Caldwell	3.58
Calhoun	3.66
Callahan	3.46
Cameron	3.74
Camp	3.48
Carson	3.39
Cass	3.47
Castro	3.38
Chambers	3.74
Cherokee	3.54
Childress	3.44
Clay	3.48
Cochran	3.38
Coke	3.44
Coleman	3.47
Collin	3.50
Collingsworth	3.43
Colorado	3.64
Comal	3.57
Comanche	3.50
Concho	3.48
Cooke	3.50
Coryell	3.51
Cottle	3.44
Crane	3.36
Crockett	3.34
Crosby	3.41
Culberson	3.29
Dallam	3.34
Dallas	3.50
Dawson	3.38
Deaf Smith	3.38
Delta	3.49
Denton	3.50
DeWitt	3.63
Dickens	3.44
Dimmit	3.51
Donley	3.39
Duval	3.65
Eastland	3.49
Ector	3.35
Edwards	3.48
Ellis	3.50
El Paso	3.29
Erath	3.50
Falls	3.56
Fannin	3.50
Fayette	3.59
Fisher	3.44
Floyd	3.40
Foard	3.44
Fort Bend	3.70
Franklin	3.48
Freestone	3.55
TEXAS	
Frio	3.53
Gaines	3.36
Galveston	3.74
Garza	3.40
Gillespie	3.56
Glasscock	3.36
Goliad	3.69
Gonzales	3.59
Gray	3.39
Grayson	3.51
Gregg	3.47
Grimes	3.66
Guadalupe	3.57
Hale	3.36
Hall	3.42
Hamilton	3.50
Hansford	3.34
Hardeman	3.44
Hardin	3.74
Harris	3.74
Harrison	3.48
Hartley	3.34
Haskell	3.46
Hays	3.57
Hemphill	3.37
Henderson	3.53
Hidalgo	3.71
Hill	3.51
Hockley	3.36
Hood	3.50
Hopkins	3.49
Houston	3.62
Howard	3.36
Hudspeth	3.30
Hunt	3.50
Hutchinson	3.34
Irion	3.40
Jack	3.50
Jackson	3.62
Jaspor	3.64
Jeff Davis	3.30
Jefferson	3.74
Jim Hogg	3.65
Jim Wells	3.71
Johnson	3.50
Jones	3.46
Karnes	3.67
Kaufman	3.50
Kendall	3.58
Kenedy	3.68
Kent	3.44
Kerr	3.57
Kimble	3.52
King	3.44
Kinney	3.50
Kleberg	3.71
Knox	3.46
Lamar	3.49
Lamb	3.36
Lampasas	3.52
La Salle	3.54
Lavaca	3.60
Lee	3.59
Leon	3.57
Liberty	3.70
Limestone	3.55
Lipscomb	3.34
Live Oak	3.67
Llano	3.54
Loving	3.35
Lubbock	3.36
Lynn	3.36
McCulloch	3.48
McLennan	3.54
McMullen	3.58
Madison	3.61
Marion	3.48
Martin	3.36
Mason	3.52
Matagorda	3.68
Maverick	3.44
Medina	3.56
Menard	3.48
Midland	3.37
Milam	3.58
Mills	3.50
Mitchell	3.41
Montague	3.50
Montgomery	3.71
Moore	3.34
Morris	3.48
Motley	3.42
Nacogdoches	3.55
Navarro	3.54
Newton	3.64
Nolan	3.44
TEXAS	
Nueces	3.74
Ochiltree	3.34
Oldham	3.38
Orange	3.70
Palo Pinto	3.50
Panola	3.54
Parker	3.50
Parmer	3.38
Pecos	3.34
Polk	3.67
Potter	3.38
Presidio	3.29
Rains	3.49
Randall	3.38
Reagan	3.37
Real	3.55
Red River	3.48
Reeves	3.36
Refugio	3.71
Roberts	3.35
Robertson	3.57
Rockwall	3.50
Runnels	3.45
Rusk	3.51
Sabine	3.59
San Augustine	3.59
San Jacinto	3.65
San Patricio	3.74
San Saba	3.49
Schleicher	3.41
Scurry	3.41
Shackelford	3.47
Shelby	3.55
Sherman	3.33
Smith	3.51
Somervell	3.50
Starr	3.67
Stephens	3.49
Sterling	3.40
Stonewall	3.46
Sutton	3.46
Swisher	3.38
Tarrant	3.50
Taylor	3.46
Terrell	3.34
Terry	3.38
Throckmorton	3.47
Titus	3.48
Tom Green	3.44
Travis	3.57
Trinity	3.63
Tyler	3.64
Upshur	3.48
Upton	3.36
Uvalde	3.55
Val Verde	3.45
Van Zandt	3.49
Victoria	3.66
Walker	3.66
Waller	3.68
Ward	3.36
Washington	3.67
Webb	3.52
Wharton	3.66
Wheeler	3.40
Wichita	3.45
Wilbarger	3.45
Willacy	3.73
Williamson	3.57
Wilson	3.62
Winkler	3.35
Wise	3.50
Wood	3.49
Yoakum	3.38
Young	3.49
Zapata	3.64
Zavala	3.49
Wght. State Avg	3.53
UTAH	
All Counties	3.29
VIRGINIA	
All Counties	3.43
WASHINGTON	
All Counties	3.31
WISCONSIN	
All Counties	3.20
WYOMING	
All Counties	3.21

(b) Schedule of Discounts for 1979—Crop Sorghum

1. Discounts apply per hundredweight:

Test Weight, lbs.	*Cents/ cwt.*
(i) 52.9–52.0	–1
(ii) 51.9–51.0	–2
2. Total damaged kernels, percent	
(i) 5.1–6.0	–2
(ii) 6.1–7.0	–4
(iii) 7.1–8.0	–6
(iv) 8.1–9.0	–8
(v) 9.1–10.0	–10
(vi) 10.1–11.0	–12
(vii) 11.1–12.0	–14
(viii) 12.1–13.0	–16
(ix) 13.1–14.0	–18
(x) 14.1–15.0	–20
3. Heat damaged kernels, percent	
(i) 0.51–1.00	–2
(ii) 1.01–2.00	–6
(iii) 2.01–3.00	–10
4. Broken kernels, foreign material and other grains, percent	
(i) 8.1–9.0	–2
(ii) 9.1–10.0	–4
(iii) 10.1–11.0	–6
(iv) 11.1–12.0	–8
(v) 12.1–13.0	–10
(vi) 13.1–14.0	–12
(vii) 14.1–15.0	–14

5. Weed control law (Discount where required by law § 1421.24)–15

(c) *Other.* Sorghum with quality factors exceeding limits shown in foregoing schedule or sorghum that (1) contains in excess of 14 percent moisture, (2) is weevily, (3) is musty, on (4) is sour, shall not be eligible for loan. In the event quantities of sorghum exceeding limits shown are delivered in satisfaction of loan obligations, such quantities will be discounted on the basis of the schedule of discounts as provided by the Kansas City commodity Office for settlement purposes. Such discounts will be established not later than the time delivery of sorghum to CCC begins and will thereafter be adjusted from time to time as CCC determines appropriate to reflect changes in market conditions. Producers may obtain schedules of such factors and discounts at county ASCS offices approximately one month prior to the loan maturity date.

Note.—This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. An approved Final Impact Statement has been prepared and is available from Bruce Weber, ASCS, (202) 447–7987.

Signed at Washington, D.C. on July 24, 1979.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 79-23515 Filed 7-30-79; 8:45 am]

BILLING CODE 3410-05-M

7 CFR Part 1427

1979 Crop Supplement to Cotton Loan Program Regulations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: Commodity Credit Corporation (CCC) is publishing the 1979 crop supplement to the cotton loan program regulations. The supplement contains the base loan rates by warehouse location for upland cotton, loan rates for extra long staple cotton, premiums and discounts for upland cotton, and micronaire differences applicable for all 1979 crop cotton. Price support loans will be available to eligible producers on 1979 crop cotton under such rates.

EFFECTIVE DATE: July 31, 1979.

FOR FURTHER INFORMATION CONTACT: Carolyn E. Cozart, Price Support and Loan Division, ASCS, U.S. Department of Agriculture, Washington, D.C. 20013, (202) 447–7973.

SUPPLEMENTARY INFORMATION: On September 1, 1978, a notice was published in the Federal Register (43 FR 39118) regarding certain determinations CCC was to make with respect to the loan program for the 1979 crops of upland and extra long staple cotton. Twenty comments were received concerning loan rates and loan rate differentials. Three respondents recommended that the loan rate be set at 50.23 cents per pound.

Seventeen respondents recommended other loan rates not within the statutory authority. One respondent recommended that loan rate differentials for grade and staple be reduced. After considering all responses, it is determined that the loan rates, premiums, discounts, and differentials proposed by CCC are fair and equitable and will be applicable to the 1979 crop of cotton. Minor revisions were made in the 1979 location differentials because of changes in transportation costs. The 1979 location differentials maintain a reasonable relationship between production areas and assure fair loan values for cotton as to location.

In accordance with the provisions of Section 103(f) of the Agriculture Act of 1949, as amended by Section 602 of the Food and Agriculture Act of 1977 and Section 102 of the Act of May 15, 1978, it has been determined that 85 percent of the average spot market price for the average of the 5 years (excluding the highest and lowest years) ending July 31, 1978, was 50.23 cents per pound and that 90 percent of the adjusted average price quoted for C.I.F. Northern Europe for the 15-week period beginning July 1, 1978, was 53.49 cents per pound. The statute provides that the loan level shall be the smaller of these prices but in no event less than 48.00 cents per pound. The base loan rate for 1979 crop upland cotton has been determined to be 50.23 cents per pound.

The cotton loan program regulations issued by CCC, containing loan operating provisions are supplemented as shown below for the 1979 crop of cotton.

Section 1427.101 contains the schedule of base loan rates by warehouse location for upland cotton based on the 50.23-cent rate. Sections 1427.102–1427.103 contain the schedule of premiums and discounts for grade and staple length and micronaire differences for upland cotton which were announced on April 23, 1979, basis Strict Low Middling 1 1/16 inch cotton micronaire 3.5 through 4.9, net weight at average location. Sections 1427.104–1427.105 contain the base loan rates and micronaire differences for eligible qualities of extra loan staple cotton which were also announced on April 23, 1979, and are based on the national average loan rate of 92.95 cents per pound, net weight.

Final Rule

Accordingly, 7 CFR 1427.100 through 1427.105 and the title of the subpart are revised to read as follows, effective as to the 1979 crops of upland and extra long staple cotton. The material previously appearing in these sections remains in full force and effect as to the crop years to which it was applicable.

Subpart—1979 Crop Supplement to Cotton Loan Program Regulations

Sec.

Authority.—Secs. 4, 5, 62 Stat. 1070 (15 U.S.C. 714 b and c); secs. 101, 103, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444, 1421); sec. 602, 91 Stat. 994, as amended (7 U.S.C. 1444); and sec. 102, 92 Stat. 240 (7 U.S.C. 1444).

Subpart—1979 Crop Supplement to Cotton Loan Program Regulations

§ 1427.100 Purpose.

This subpart is for the purpose of announcing that loans will be available on upland and extra long staple cotton of the 1979 crop under the terms and conditions stated in the cotton loan program regulations issued by CCC and contained in this part 1427. This subpart also contains schedules to be used in determining loan rates on 1979 crop cotton.

§ 1427.101 Schedule of base loan rates for eligible 1979 crop upland cotton by warehouse location.

[in cents per pound, net weight basis SLM white 1 1/16 "4134"]

Alabama

City	County	Loan rate
Albertville	Marshall	51.20
Aliceville	Pickens	51.00
Atmore	Escambia	51.00
Attalla	Etowah	51.45
Bella Mina	Limestone	51.20
Birmingham	Jefferson	51.20
Centre	Cherokee	51.45
Collinsville	DeKalb	51.20
Cullman	Cullman	51.20
Decatur	Morgan	51.20
Eclectic	Elmore	51.20
Elkmont	Limestone	51.20
Eutaw	Greene	51.00
Fayette	Fayette	51.20
Frisco City	Monroe	51.00
Geraldine	DeKalb	51.20
Greenbrier	Limestone	51.20
Greensboro	Hale	51.00
Hamilton	Marion	51.00
Hartselle	Morgan	51.20
Huntsville	Madison	51.20
Hurtsboro	Russell	51.45
McCullough	Escambia	51.00
Madison	Madison	51.20
Moundville	Hale	51.00
New Hope	Madison	51.20
Northport	Tuscalousa	51.00
Opelika	Lee	51.45
Panola	Sumter	51.00
Red Bay	Franklin	51.00
Section	Jackson	51.20
Selma	Dallas	51.20
Sulligent	Lamar	51.00
Sweet Water	Marengo	51.00
Talladega	Talladega	51.45
Tallassee	Elmore	51.20
Tuscumbia	Colbert	51.00
Union Springs	Bullock	51.20
Wetumpka	Elmore	51.20

Arizona

Eloy	Pinal	49.00
Phoenix	Maricopa	49.00
Picacho	Pinal	49.00
Yuma	Yuma	49.00

Arkansas

Blytheville	Mississippi	50.85
Bradley	Lafayette	50.65
Brinkley	Monroe	50.85
Clarendon	Monroe	50.85
Cotton Plant	Woodruff	50.85
Dell	Mississippi	50.85
Dumas	Desha	50.85
England	Lonoke	50.85
Eudora	Chicot	50.85
Evadale	Mississippi	50.85
Forrest City	St. Francis	50.85
Helena	Phillips	50.85
Hughes	St. Francis	50.85
Jonesboro	Craighead	50.85
Leachville	Mississippi	50.85
McCrory	Woodruff	50.85
McGehee	Desha	50.85
Marianna	Lee	50.85

Arkansas

City	County	Loan rate
Marked Tree	Poinsett	50.85
Marvell	Phillips	50.85
Newport	Jackson	50.85
North Little Rock	Pulaski	50.85
Osceola	Mississippi	50.85
Pine Bluff	Jefferson	50.85
Portland	Ashley	50.85
Trumann	Poinsett	50.85
Walnut Ridge	Lawrance	50.85
West Memphis	Crittenden	50.85

California

Bakersfield	Kern	49.00
Calico	Kern	49.00
El Centro	Imperial	49.00
Fresno	Fresno	49.00
Hanford	Kings	49.00
Imperial	Imperial	49.00
Kerman	Fresno	49.00
Pinedale	Fresno	49.00
Tulare	Tulare	49.00

Florida

Jay	Santa Rosa	51.20

Georgia

Allentown	Wilkinson	51.70
Arabi	Crisp	51.45
Arlington	Calhoun	51.20
Atlanta	Fulton	51.70
Augusta	Richmond	51.95
Bartow	Jefferson	51.70
Blakely	Early	51.20
Byrumville	Dooly	51.45
Cadwell	Laurens	51.70
Cochran	Blackley	51.70
Columbus	Muscogee	51.70
Comer	Madison	51.95
Cordele	Crisp	51.45
Dawson	Terrell	51.45
DeSoto	Sumter	51.45
Dexter	Laurens	51.70
Doerun	Colquitt	51.20
Dublin	Laurens	51.70
Eastman	Dodge	51.70
Edison	Calhoun	51.20
Elko	Houston	51.70
Fitzgerald	Ben Hill	51.45
Funston	Colquitt	51.20
Hawkinsville	Pulaski	51.70
Jeffersonville	Twiggs	51.70
Mc Donough	Henry	51.70
Madison	Morgan	51.70
Marshallville	Macon	51.70
Metter	Candler	51.70
Midville	Burke	51.70
Monroe	Walton	51.70
Muntezuma	Macon	51.70
Moultrie	Colquitt	51.20
Norman Park	Colquitt	51.20
Omega	Tift	51.45
Pinehurst	Dooly	51.45
Pitts	Wilcox	51.45
Rebecca	Turner	51.45
Reynolds	Taylor	51.70
Rochelle	Wilcox	51.45
Rome	Floyd	51.70
Rutledge	Morgan	51.70
Sandersville	Washington	51.70
Senoia	Coweta	51.70
Shellman	Randolph	51.20
Social Circle	Walton	51.70
Sycamore	Turner	51.45
Trion	Chattooga	51.70
Unadilla	Dooly	51.45
Vienna	Dooly	51.45
Wadley	Jefferson	51.70
Watkinsville	Oconee	51.95
Waynesboro	Burke	51.70
Winder	Barrow	51.95
Wrightsville	Johnson	51.70
Yatesville	Upson	51.70

Louisiana

Bernice	Union	50.65
Cheneyville	Rapides	50.65
Columbia	Caldwell	50.85
Delhi	Richland	50.85
Ferriday	Concordia	50.85
Lake Providence	East Carroll	50.85
Mansfield	De Soto	50.65
Mer Rouge	Morehouse	50.85

Louisiana

City	County	Loan rate
Monroe	Ouachita	50.85
Natchitoches	Natchitoches	50.85
Newellton	Tensas	50.85
New Orleans	Orleans	50.85
Oak Grove	West Carroll	50.85
Plain Dealing	Bossier	50.85
Rayville	Richland	50.85
Tallulah	Madison	50.85
Winnsboro	Franklin	50.85

Mississippi

Aberdeen	Monroe	50.90
Belesville	Panola	50.90
Belzoni	Humphreys	50.85
Canton	Madison	50.90
Carthage	Leake	50.90
Clarksdale	Coahoma	50.85
Cleveland	Bolivar	50.85
Como	Panola	50.90
Corinth	Alcorn	50.90
Drew	Sunflower	50.85
Flora	Madison	50.85
Greenville	Washington	50.85
Greenwood	Leflore	50.85
Grenada	Grenada	50.90
Gulfport	Harrison	50.85
Hollendale	Washington	50.85
Holly Springs	Marshall	50.90
Houston	Chickasaw	50.90
Indianola	Sunflower	50.85
Inverness	Sunflower	50.85
Ita Bena	Leflore	50.85
Kosciusko	Attala	50.90
Leland	Washington	50.85
Marks	Quitman	50.85
New Albany	Union	50.90
Paynes	Tallahatchie	50.85
Pontotoc	Pontotoc	50.90
Quitman	Clarke	50.85
Ripley	Tippah	50.90
Rolling Fork	Sharkey	50.85
Rosedale	Bolivar	50.85
Ruleville	Sunflower	50.85
Shaw	Bolivar	50.85
Shelby	Bolivar	50.85
Shoqualak	Noxubee	50.90
Sledge	Quitman	50.85
Tunica	Tunica	50.85
Tutwiler	Tallahatchie	50.85
Vicksburg	Warren	50.85
Yazoo City	Yazoo	50.85

Missouri

Arbyrd	Dunklin	50.85
Caruthersville	Pemiscot	50.85
Gideon	New Madrid	50.85
Hayti	Pemiscot	50.85
Kennett	Dunklin	50.85
Lilbourn	New Madrid	50.85
Malden	Dunklin	50.85
Portageville	New Madrid	50.85
Sikeston	Scott	50.85

New Mexico

Artesia	Eddy	50.15
Deming	Luna	49.95
Las Cruces	Dona Ana	50.15
Roswell	Chaves	50.15
Lovington	Lea	50.35

North Carolina

Charlotte	Mecklenburg	52.05
Cherryville	Gaston	52.05
Conway	Northampton	51.95
Dunn	Harnett	51.95
Edenton	Chowan	51.95
Enfield	Halifax	51.95
Fayetteville	Cumberland	51.95
Jackson	Northampton	51.95
Laurenburg	Scotland	51.95
Lincolnton	Lincoln	52.05
Lumberton	Robeson	51.95
Monroe	Anson	52.05
Nashville	Nash	51.95
Parkton	Robeson	51.95
Pembroke	Robeson	51.95
Raeford	Hoke	51.95
Red Springs	Robeson	51.95
Rich Square	Northampton	51.95
Roanoke Rapids	Halifax	51.95
Salisbury	Rowan	52.05

North Carolina

City	County	Loan rate
Scotland Neck	Halifax	51.95
Shelby	Cleveland	52.05
Smithfield	Johnston	51.95
Tarboro	Edgecombe	51.95
Wagram	Scotland	51.95
Weldon	Halifax	51.95
Wilson	Wilson	51.95

Oklahoma

Altus	Jackson	50.45
Chickasha	Grady	50.45
Frederick	Tillman	50.45
Mt View	Kiowa	50.45

South Carolina

Abbeville	Abbeville	52.05
Allendale	Allendale	51.95
Anderson	Anderson	52.05
Bamberg	Bamberg	51.95
Bennettsville	Marlboro	51.95
Bishopville	Lee	51.95
Calhoun Falls	Abbeville	52.05
Cameron	Calhoun	51.95
Chester	Chester	52.05
Chesterfield	Chesterfield	52.05
Clio	Marlboro	51.95
Columbia	Richland	52.05
Dalzell	Sumter	51.95
Darlington	Darlington	51.95
Denmark	Bamberg	51.95
Dillon	Dillon	51.95
Edgefield	Edgefield	52.05
Elloree	Orangeburg	51.95
Estill	Hampton	51.95
Gaffney	Cherokee	52.05
Greenville	Greenville	52.05
Hartsville	Darlington	51.95
Lake City	Florence	51.95
Lamar	Darlington	51.95
Manning	Clarendon	51.95
Marion	Marion	51.95
Newberry	Newberry	52.05
Norway	Orangeburg	51.95
Orangeburg	Orangeburg	51.95
Pendelton	Anderson	52.05
Pinewood	Sumter	51.95
Rock Hill	York	52.05
Spartanburg	Spartanburg	52.05
St. Matthews	Calhoun	51.95
Summerton	Clarendon	51.95
Sumter	Sumter	51.95
Timmonsville	Florence	51.95
Williston	Barnwell	51.95

Tennessee

Brownsville	Haywood	50.90
Covington	Tipton	50.90
Dyersburg	Dyer	50.90
Henderson	Chester	50.90
Jackson	Madison	50.90
Memphis	Shelby	50.90
Milan	Gibson	50.90
Ripley	Lauderdale	50.90
Tiptonville	Lake	50.90

Texas

Abernathy	Hale	50.35
Ballinger	Runnels	50.45
Big Spring	Howard	50.35
Bovina	Parmer	50.35
Brownfield	Terry	50.35
Brownsville	Cameron	50.35
Bryan	Brazos	50.45
Cameron	Milam	50.45
Childress	Childress	50.45
Cleburne	Johnson	50.45
Colorado City	Mitchell	50.45
Cooper	Delta	50.65
Corpus Christi	Nueces	50.45
Corsicana	Navarro	50.45
Crockett	Houston	50.45
Dimmitt	Castro	50.35
Enloe	Delta	50.65
Ennis	Ellis	50.45
Fabens	El Paso	50.15
Floydada	Floyd	50.35
Gainesville	Cooke	50.65
Galveston	Galveston	50.65
Greenville	Hunt	50.65
Hamlin	Jones	50.45
Harlingen	Cameron	50.35
Haskell	Haskell	50.45

Texas

City	County	Loan rate
Hearne	Robertson	50.45
Hillsboro	Hill	50.45
Houston	Harris	50.65
Hubbard	Hill	50.45
Kenedy	Karnes	50.45
Lamesa	Dawson	50.35
Levelland	Hockley	50.35
Littlefield	Lamb	50.35
Lockhart	Caldwell	50.45
Lockney	Floyd	50.35
Lubbock	Lubbock	50.35
McKinney	Collin	50.65
Memphis	Hall	50.45
Morton	Cochran	50.35
Muleshoe	Bailey	50.35
Navasota	Grimes	50.45
Needville	Fort Bend	50.65
O'Donnell	Lynn	50.35
Paducah	Cottle	50.45
Pecos	Reeves	50.35
Plainview	Hale	50.35
Quanah	Hardeman	50.45
Quitaque	Briscoe	50.35
Ralls	Crosby	50.35
Raymondville	Willacy	50.35
Roaring Springs	Motley	50.45
Rochester	Haskell	50.45
Rule	Haskell	50.45
San Angelo	Tom Green	50.45
Seagraves	Gaines	50.35
Seymour	Baylor	50.45
Slaton	Lubbock	50.35
Snyder	Scurry	50.45
Stamford	Jones	50.45
Stanton	Martin	50.35
Sudan	Lamb	50.35
Sweetwater	Nolan	50.45
Tahoka	Lynn	50.35
Taylor	Williamson	50.45
Temple	Bell	50.45
Terrell	Kaufman	50.65
Texarkana	Bowie	50.65
Tulia	Swisher	50.35
Turkey	Hall	50.35
Vernon	Wilbarger	50.45
Waco	McLennan	50.45
Waxahachie	Ellis	50.45

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16 - 1979 Crop Supplement to Cotton Loan Program Regulations

§ 1427.102 Schedule of premiums and discounts for grade and staple length of eligible 1979-crop upland Cotton

(Basis Strict Low Middling 1-1/16 Inches, Net Weight)

Grade	Code	Staple Length (Inches): 13/16 Thru 29/32 (26-29)	15/16 (30)	31/32 (31)	1 (32)	1-1/32 (33)	1-1/16 (34)	1-3/32 (35)	1-1/8 (36)	1-5/32 & Longer (37 & Longer)
		---- Points Per Pound ----								
WHITE										
SM & BETTER	(11 & 21)	-530	-435	-340	-200	+ 50	+210	+235	+270	+380
MID PLUS	(30)	-545	-450	-360	-220	+ 25	+185	+215	+250	+355
MID	(31)	-555	-465	-370	-235	+ 10	+165	+195	+235	+335
SLM PLUS	(40)	-610	-510	-430	-315	- 90	+ 70	+ 95	+125	+225
SLM	(41)	-640	-545	-465	-365	-150	B	+ 30	+ 70	+155
LM PLUS	(50)	-720	-640	-565	-465	-315	-190	-170	-135	- 70
LM	(51)	-765	-685	-610	-520	-395	-280	-255	-230	-195
SGO PLUS	(60)	-965	-900	-830	-765	-665	-610	-600	-585	-585
SGO	(61)	-1010	-955	-880	-820	-740	-690	-685	-670	-670
GO PLUS	(70)	-1180	-1125	-1075	-1030	-955	-915	-910	-900	-900
GO	(71)	-1225	-1170	-1120	-1075	-1010	-980	-975	-960	-960
LIGHT SPOTTED										
SM & BETTER	(12 & 22)	-580	-490	-405	-295	- 60	+ 80	+110	+140	+235
MID	(32)	-630	-550	-460	-355	-150	- 10	+ 15	+ 55	+150
SLM	(42)	-720	-660	-580	-490	-380	-270	-255	-215	-185
LM	(52)	-910	-840	-780	-720	-680	-635	-630	-615	-615
SPOTTED										
SM & BETTER	(13 & 23)	-770	-710	-645	-570	-450	-380	-375	-350	-345
MID	(33)	-845	-790	-730	-650	-575	-515	-510	-495	-495
SLM	(43)	-970	-920	-865	-825	-770	-740	-740	-730	-730
LM	(53)	-1110	-1060	-1015	-990	-945	-935	-930	-925	-925
TINGED 1/										
SM	(24)	-1040	-995	-960	-930	-900	-890	-885	-845	-845
MID	(34)	-1095	-1040	-1010	-980	-950	-940	-940	-895	-895
SLM	(44)	-1170	-1115	-1085	-1060	-1025	-1020	-1020	-980	-980
LM	(54)	-1290	-1235	-1205	-1175	-1145	-1130	-1130	-1105	-1105
LIGHT GRAY										
SM & BETTER	(16 & 26)	-700	-605	-515	-395	-180	- 35	0	+ 45	+140
MID	(36)	-840	-740	-660	-560	-450	-295	-280	-240	-210
SLM	(46)	-1090	-995	-930	-865	-770	-700	-680	-620	-630
GRAY										
SM & BETTER	(17 & 27)	-845	-750	-680	-590	-510	-390	-375	-335	-300
MID	(37)	-1105	-1005	-940	-870	-805	-755	-740	-720	-720
SLM	(47)	-1355	-1260	-1190	-1150	-1100	-1055	-1050	-1030	-1030

GRADE SYMBOLS: SM - Strict Middling; MID - Middling; SLM - Strict Low Middling; LM - Low Middling; SGO - Strict Good Ordinary; GO - Good Ordinary

1/ Cotton classed as "Yellow Stained" (Middling and better grades) will be eligible for loan, if otherwise eligible, at a discount 200 points greater than the discount applicable to the comparable quality in the color group "Tinged."

BILLING CODE 3410-05-C

§ 1427.103 Schedule of micronaire differentials for 1979-crop upland cotton.

Micronaire reading:	Points per pound	Micronaire reading:	Points per pound
5.3 and above	—135	3.0 through 3.2	—225
5.0 through 5.2	—65	2.7 through 2.9	—400
3.5 through 4.9	0	2.6 and below	—605
3.3 through 3.4	—65		

§ 1427.104 Schedule of loan rates for eligible qualities of 1979-crop extra long staple cotton by warehouse location.

[In cents per pound, net weight—micronaire 3.5 and above [1]]

	Staple length (inches)			
	1⅜ cotton stored in approved warehouses in—		1 1/16 and longer cotton stored in approved warehouses in—	
	Arizona and California	New Mexico, Texas, and other States	Arizona and California	New Mexico, Texas, and other States
Grade:				
1	96.50	97.20	97.00	97.70
2	96.05	96.75	96.50	97.20
3	95.60	96.30	96.05	96.75
4	94.45	95.15	94.70	95.40
5	89.40	90.10	89.65	90.35
6	73.10	73.80	73.35	74.05
7	57.65	58.35	57.90	58.60
8	54.00	54.70	54.25	54.95
9	51.85	52.55	52.10	52.80

[1] A micronaire premium of 60 points (0.60 cent) per pound is included in the loan rate for each eligible quality; thus, the national average loan rate reflected in the above schedule is 93.55 cents per pound. Cotton with micronaire readings below the micronaire range "3.5 and above" will be subject to the discounts in the schedule of micronaire differences for ELS cotton which follows:

§ 1427.105 Schedule of micronaire differentials for 1979-crop extra long staple cotton.

Micronaire reading and points per pound: 3.5 and above—0; 3.3 through 3.4——125; 3.0 through 3.2——245; and 2.7 through 2.9——465.

NOTE.—This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. This regulation contains necessary operating provisions needed to implement the national average loan rates for extra long staple and upland cotton, which was determined to be significant, announced on October 31, 1978, for which a final impact statement has been prepared and is available from Charles Cunningham, ASCS, (202) 447-7873.

Signed at Washington, D.C. on July 24, 1979.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 79-23459 Filed 7-30-79; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

7 CFR Part 1701

Filled Buried Wire Specification; File With Existing Specification

AGENCY: Rural Electrification Administration.

ACTION: Final rule.

SUMMARY: REA hereby amends Appendix A—REA Bulletin to include a File With to REA Bulletin 345-70 to announce a change in the attenuation requirements of REA Specification PE-54. This action will enable all manufacturers of filled buried wires presently on the REA "List of Materials" to maintain their current listing.

EFFECTIVE DATE: July 31, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Harry M. Hutson, Chief, Outside Plant Branch, Telephone Operations and Standards Division, Telephone Number: AC(202) 447-3827.

SUPPLEMENTARY INFORMATION: Addendum No. 2, PE-54, issued March 20, 1979, added attenuation requirements to the specification because of associated problems with the placement of subscriber carrier on filled buried wire. It was the intention of Addendum No. 2 to specify a set of attenuation requirements with reasonable tolerances which could be met by all wire and cable manufacturers without significant design changes in their products. Since this was not accomplished the proposed File With allows for a broadening of the attenuation tolerances until a realistic set of requirements can be developed.

In that the material contained herein is a matter relating to a loan program of the Rural Electrification Administration, the relevant provisions of the Administrative Procedures Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable. However, in accordance with the spirit of the public policy set forth in 5 U.S.C. 553 interested persons may submit written comments, suggestions, data, or arguments to the contact address given above. Material thus submitted will be evaluated and acted upon in the same manner as if the document were a proposal. Until such time as further changes are made, the File With to REA Bulletin 345-70 shall remain in effect, thus permitting the public business to proceed more expeditiously.

This Final Rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement has been prepared and is available from Mr. Joseph M. Flanigan, Director, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated: July 24, 1979.

John H. Arnesen,

Assistant Administrator.

[FR Doc. 79-23513 File 7-30-79; 8:45 am]

BILLING CODE 3410-15-M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg B; EC-0014]

Equal Credit Opportunity; Official Staff Interpretation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official Staff Interpretation.

SUMMARY: The Board is publishing the following official staff interpretation of Regulation B, regarding whether a credit card issuer may require "authorized users" to assume contractual liability for the account. The agency is taking this action in response to a request for interpretation of this regulation.

EFFECTIVE DATE: On or after August 30, 1979.

FOR FURTHER INFORMATION CONTACT: Robert C. Plows, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3667).

SUPPLEMENTARY INFORMATION: (1) Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitations stated in 12 CFR Part 261.6.

(2) An opportunity for public comment on an official staff interpretation may be provided upon request of interested parties and in accordance with 12 CFR Part 202.1(d)(2)(ii). As provided by 12 CFR Part 202.1(d)(3) every request for public comment must be in writing, should clearly identify the number of the official staff interpretation in question, should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 and must be postmarked or received by the Secretary's office before the effective date of the interpretation. The request must also state the reasons why an opportunity for public comment would be appropriate.

(3) Authority: 15 U.S.C. 1691(b).

§ 202.7(d)(1) Credit card issuer may treat "authorized users" as joint applicants, therefore requiring them to assume contractual liability for the account.

July 11, 1979.

You ask in your . . . letter for an official interpretation of Regulation B. Your client, a bank, proposes to require all "authorized users" of credit cards that it issues to sign the credit agreement, thereby assuming contractual liability for the account. You ask whether Regulation B prohibits the proposed practice.

As you point out, the signature provisions in § 202.7(d) do not mention "authorized users." In the absence of any specific mention of authorized users, the general signature rule of § 202.7(d)(1) applies, and the issue becomes: may a creditor require that all authorized users become co-obligors and treat them as joint applicants?

The staff continues to adhere to the position taken in previous informal letters that a creditor may condition its acceptance of authorized users upon their becoming co-obligors and, thus, joint applicants too. Since the creditor is not seeking the authorized user's participation in the credit plan, the creditor may restrict that participation to a person who agrees to become a co-obligor and applicant by signing the relevant credit documents. Such a policy, if applied in a non-discriminatory fashion, would not violate Regulation B.

Obviously, a creditor may permit authorized users without requiring that they also become joint applicants and assume contractual liability for the account. Indeed, a creditor could accept authorized users but not allow joint applicants, or could offer only individual accounts without authorized users. Please also recall that § 202.7(a) provides that "a creditor shall not refuse to grant an individual account to a creditworthy applicant . . . ." Therefore, a creditworthy applicant seeking a single credit card for his or her sole use may not be required to provide additional signatures.

As you have requested, this is an official staff interpretation of Regulation B. It will become effective on or before August 30, 1979, unless a request for public comment, made in accordance with the Board's procedures, is received and granted. We will notify you if the effective date of the interpretation is suspended. If you have further questions about this letter, please let me know. If you have other questions in the future, you may also address them to Mr. John Yorke, Assistant Vice President, Consumer Affairs Department, Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, Missouri 64198.

Sincerely,

Jerauld C. Kluckman,

Associate Director.

Board of Governors of the Federal Reserve System, July 20, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 79-23533 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 226

Truth in Lending; Technical Amendments to Regulation Z

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical amendments to Regulation Z to correct references to a section number that has been redesignated: Correction.

SUMMARY: This notice corrects a previous Federal Register document (FR Doc. 79–22262) appearing at page 42165 of the issue for Thursday, July 19, 1979.

FOR FURTHER INFORMATION CONTACT: Anne Geary, Assistant Director, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202–452–2761.

SUPPLEMENTARY INFORMATION: The last paragraph in the center column on page 42165 should read as follows:

Therefore, pursuant to the authority granted in 15 U.S.C. 1604 (1976, the Board amends Interpretations § 226.705 and § 226.707 to insert "§ 226.7(f)" wherever the citation "§ 226.7(e)" currently appears.

Board of Governors of the Federal Reserve System, July 24, 1979.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 79-23532 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Designation and Management of Marine Sanctuaries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: These regulations revise existing regulations which prescribe the procedures for nominating and designating marine sanctuaries, establishing appropriate management systems within designated sanctuaries and enforcing compliance with these management systems. The regulations reflect new approaches and interpretations developed by NOAA during the administration of the program to date.

EFFECTIVE DATE: August 31, 1979.

FOR FURTHER INFORMATION CONTACT: Joann Chandler, Director, Sanctuary Programs Office, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street, N.W., Washington, D.C. 20235; (202) 634–4236.

SUPPLEMENTARY INFORMATION: On February 5, 1979, NOAA published proposed revisions to its General Marine Sanctuaries regulations pursuant to Title III of the Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. 92–532, 16 U.S.C. 1431–1434 (the Act). Written comments were requested by April 6, 1979. Comments were received from three members of the House of Representatives, ten Federal agencies, eleven State reviewers, seven industrial groups, fourteen environmental groups, two Regional Fishery Management Councils and three other commentators. These comments have been considered in preparing these regulations.

Discussion of Major Issues and NOAA Responses

Below is a discussion of the major comments. It is followed by a section-

by-section discussion of the additional comments received.

Breadth of Criteria: A number of reviewers felt that the criteria by which an area would be judged eligible for inclusion on a List of Recommended Areas and ultimately for designation as a sanctuary and/or the criteria by which selection of Active Candidates would be made were unclear. Suggestions included qualifying only those areas which are "most unique, rare or distinctive" or "unique" resources. In particular, criterion (b)(2), "a marine ecosystem of exceptional richness . . ." was thought to open up the possibility of vast areas for inclusion. One reviewer thought the present classification scheme (present § 923.10) was preferable.

NOAA Response: NOAA's experience and public reaction have indicated that the present criteria were not helpful. Response to the new criteria was generally favorable. NOAA has rewritten § 922.21 slightly, including § 922.21(b)(2) to provide additional focus and alleviate the concerns expressed. It should be kept in mind that the criteria of § 922.21(b) are necessarily somewhat broad and that the criteria for the selection of Active Candidates will be the basis for narrowing the number of sites actually designated. In addition the boundary section (922.27) has been incorporated into the criteria section to make clearer the intention to concentrate on discrete areas.

Specification of Boundaries: Several reviewers objected to the possibility, inherent in § 922.27, that the boundary of an area being considered for a marine sanctuary could be changed at any time prior to the designation, even following the EIS process, conceivably without consultation.

NOAA Response: NOAA agrees that the regulations as written raised the concern expressed. The regulations have been reorganized to make clear that any changes in boundaries would receive the same examination and consultation as any other changes made during the review process.

Economic Analysis: A number of commentators objected to the omission of the economic value of resources which would be protected by a marine sanctuary designation as a factor to be considered in selecting Active Candidates. These commentators pointed out that the economic consequences of failing to utilize any resources because of sanctuary designation are to be taken into account under § 922.23(a)(6) and rational decisionmaking should balance both factors.

NOAA Response: NOAA agrees with these comments and has added a new § 922.23(a)(7) to add the economic value of the protected resources as a factor to be considered. At the same time, NOAA recognizes that some of the values to be protected under the Act are not easily quantifiable economically and the inability to assign a clean economic value to the resources of an area should not disqualify it as a sanctuary candidate.

Treatment of Esthetics: Five reviewers felt that the esthetic value of an area was not given the proper emphasis in the consideration of that area for possible designation as a marine sanctuary. Section 922.21 did not list the esthetic value of an area alone as one of the resource values making it eligible for placement on the List of Recommended Areas and thus ultimately for designation as a sanctuary. Section 922.23, however, did list the esthetic value of the area as one of the factors to be considered in selecting an area as an Active Candidate once it has been placed on the List of Recommended Areas. Two commentators felt that esthetics alone should qualify an area for listing and ultimately designation and should therefore be included as a separate criteria under § 922.21. One reviewer felt that the esthetic quality of an area was "too vague" to be considered even in the selection of Active Candidates. Two other commentators essentially agreed with NOAA's position that the esthetic quality of an area should be considered, but should not be the sole basis for a sanctuary. They requested additional clarification that esthetics not be the sole basis.

NOAA Response: NOAA believes that the Act provides discretion in treating an area whose sole value is esthetic and that it is highly unlikely that in practice a situation will ever arise where esthetic value will not be combined with one or more of the criteria listed in § 922.21, e.g., recreational use or distinctive or fragile ecological features which will qualify the area for initial listing, and the esthetic value will be one of the factors in considering the priority of the area for actual designation. Consequently, NOAA has not altered the basic treatment of esthetics.

Designation Modification: A number of reviewers suggested that the provisions of § 922.26(b) requiring the completion of a full designation procedure to modify a designation could prove burdensome and prevent adequate response to emergency situations.

NOAA Response: NOAA agrees that a certain degree of flexibility to deal with emergency situations is necessary but feels that the more appropriate method is to provide for limited emergency regulation in the Designation document to ensure through the amendment procedure including agency consultation and public review and participation, appropriate review prior to modifying the Designation itself. A provision for emergency regulation has been proposed in the Flower Gardens Marine Sanctuary Designation document and a new § 922.26(d) has been added to these regulations expressly recognizing such an emergency provision.

Section-by-Section Analysis

(a) Section 922.1—Policy.—(1) One commentator suggested that the language is too broad and could include species whose management is primarily the responsibility of the Regional Fishery Management Councils under the Fishery Conservation and Management Act of 1976 (FCMA).

NOAA Response: Both commercial and recreationally valuable species of fish and their habitats are among the resources which a sanctuary could be designed to protect, and activities affecting such species could become subject to control in a designated sanctuary. The Designation document described in § 922.26(b) provides the mechanism for ensuring for each sanctuary that only appropriate activities are regulated and that other activities are excluded from regulation. There is no suggestion in § 922.1 that regulation will include fishing activities or interfere with the management responsibility of the councils.

(2) One reviewer suggested that "minimum regulation necessary to protect legitimate environmental interests" be listed as a major goal of the program.

NOAA Response: Section 922.23 states that the existence of adequate regulatory authority to protect the resources is a criterion for the selection of Active Candidates (see comment (g)(5) below). Furthermore, under the statute only "reasonable and necessary" regulations may be imposed in any sanctuary.

(3) One commentator suggested that some mention of the distinction between the marine and estuarine sanctuary programs be made.

NOAA Response: Section 922.1(d) has been rewritten to describe briefly the estuarine program and cross-reference its regulations.

(4) Three commentators requested additional clarification of the extent to

which compatible activities are to be allowed in a sanctuary. One commentator suggested that § 922.1(c) specifically state that "compatible, multiple human use" should be allowed; another suggested that § 922.1(c) specify that activities which "can be made compatible" with the sanctuary be specifically allowed; the third appears to suggest that no human activity be allowed.

NOAA Response: NOAA feels that the formulation of § 922.1(c) clearly provides that compatible activities may take place in a sanctuary and this adequately responds to the concerns of the first two comments. It does not agree with the third commentator that no human activities should be allowed. NOAA's interpretation is supported by the legislative history of the Act.

(5) Two commentators found that § 922.1 (a) and (b) were "somewhat contradictory."

NOAA Response: Section 922.1(b) establishes a "primary emphasis" for the program within the broader purposes described in § 922.1(a). No inconsistency results.

(6) One commentator requested clarification of the distinction between "natural" and "biological" resources. A second commentator suggested that "natural" should read "physical."

NOAA Response: Natural resources includes physical resources. NOAA prefers the somewhat broader term.

(7) One commentator suggested that the purposes should include preservation and restoration for research purposes.

NOAA Response: The significance of an area for research purposes is listed as a criterion for the selection of Active Candidates under § 922.23. NOAA feels this provision sufficiently emphasizes the importance of research, which is not among the values specifically listed in the Act.

(8) Two commentators objected to using cumulative impacts to determine whether or not activities will be allowed in a sanctuary.

NOAA Response: NOAA feels that cumulative impacts can be as significant to the destruction of resources as other impacts and assessing these impacts with respect to certain activities is important. It may be necessary to restrict or ban certain activities to control impacts including cumulative impacts.

(9) One commentator suggested language redrafting § 922.1(a) to clarify the reason for identifying distinctive areas.

NOAA Response: NOAA has redrafted this section as suggested.

(10) One commentator suggested clarification as to who determines whether a use is detrimental.

NOAA Response: The regulations as a whole set forth the procedures for making this determination, which procedures include review of the initial submission, consultations with other Federal agencies, State and local governments and interested parties, and the full EIS procedure.

(11) Two commentators suggested specifying additional programs closely related to marine sanctuaries.

NOAA Response: NOAA has added the programs suggested.

(12) One commentator questioned the phrase, "Congressional design."

NOAA Response: This phrase has been deleted.

(b) Section 922.2—Definitions.—(1) One commentator suggested that terms such as "exceptional richness," "sufficient" and "degradation," be more specifically defined.

NOAA Response: This comment relates essentially to the breadth of the criteria and is analyzed in connection with §§ 922.21 and 922.23.

(2) One commentator questioned whether the definition of "ocean waters" in section 922.2(e) excluded from consideration marine sanctuary sites in estuarine areas lying inland of the baselines from which the territorial sea is measured.

NOAA Response: Exclusion of such areas was unintentional. This definition appears to be unnecessary and has been deleted.

(3) One commentator requested that the area of the Great Lakes eligible for consideration for marine sanctuaries be defined.

NOAA Response: NOAA has included the definition of the Great Lakes contained in the Coastal Zone Management Act.

(4) One commentator objected to the exclusion of the Trust Territories of the Pacific Islands from the definition of "United States" in § 922.2(d).

NOAA Response: This omission was inadvertent and has been corrected.

(c) Section 922.10—Effect of Marine Sanctuary Designation.—One commentator felt that NOAA should specify the manner in which recognized principles of international law would be applied where sanctuaries include areas outside the territorial sea.

NOAA Response: Following consultation with the State Department, NOAA has determined that such application must be made on a case-by-case basis to ensure conformance with the evolving principles involved.

(d) Section 922.20—Submission of Recommendations.—(1) One commentator suggested that the format for submission should include a description of past uses as well as present and prospective uses.

NOAA Response: NOAA has incorporated this suggestion in the format.

(2) One commentator suggested that the regulations should establish a more affirmative role for NOAA rather than an implicitly passive/reactive role.

NOAA Response: Based on past experience, NOAA anticipates that for the most part potential sites will be brought to NOAA's attention initially by interested persons outside the agency. NOAA has actively solicited this help and relies upon the expertise and experience provided. NOAA on its own could propose an appropriate area for inclusion on the list and § 922.20(a) has been rewritten to make this possibility explicit.

(3) One commentator requested that a copy of any submission be forwarded to the State or States most affected upon receipt; a second commentator suggested that notification be given to the affected local and State agencies and other interested parties.

NOAA Response: A major purpose of including an area in the List of Recommended Areas is to notify all interested persons at the appropriate stage that the area has at least some potential for sanctuary status and earlier notification is unnecessarily burdensome. However, a new § 922.25(a) has been added to provide that, in States with coastal management plans approved under Section 306 of the Coastal Zone Management Act of 1972, as amended, the designated Coastal Zone Management agency will be notified upon receipt of a recommendation.

(4) One commentator pointed out that the format of § 923.20 should require an explanation of why a particular area should be designated a sanctuary.

NOAA Response: The range of information called for, particularly under the heading "Management," should allow initial analysis of this issue. It is not reasonable to request more specificity from the public prior to the consultation and review process.

(5) One commentator suggested the elimination of the format requirements of § 922.20(b), allowing the public to submit recommendations essentially in any form, and allowing a 30-day period for NOAA to request additional information.

NOAA Response: NOAA feels that use of the format suggested will provide

more timely receipt of necessary information. Additional information can be requested either from the nominator, from outside sources, or from within NOAA itself, and any failure to submit the information suggested can be corrected.

(6) One commentator pointed out that it might be difficult for a recommender to assess the effects of sanctuary regulations.

NOAA Response: NOAA has inserted the word "recommended" in this section of the format to indicate that such assessment should simply be the recommender's suggestion as to what needs to be regulated.

(e) Section 922.21—Analysis of Recommendations.—(1) Three commentators suggested that migration routes and staging areas be added to the life cycle activities described in § 922.21(b)(3).

NOAA Response: NOAA agrees and has incorporated this suggestion.

(2) Two commentators objected to the inclusion of "rare to the waters to which the Act applies" as a criterion.

NOAA Response: NOAA feels that an obligation exists to consider the necessity of protecting resources which are rare in U.S. waters and, therefore, such areas should be listed. NOAA expects that sites of little overall value will be screened out as Active Candidates are selected.

(3) One commentator suggested deleting historical or cultural remains as criteria for eligibility; a second commentator suggested that these resources might be given less weight than those involving biological resources.

NOAA Response: NOAA feels historical and cultural remains such as the wreck of the U.S.S. *Monitor* are the subject of strong public interest and are appropriate resources for protection. The program does place "primary emphasis" on physical and biological resources (See § 922.1(b)).

(4) Two commentators objected to criterion (b)(4), "intensive recreational use growing out of * * * distinctive marine characteristics" as being too restrictive. One commentator felt the criterion conflicted somewhat with the purposes in § 922.1.

NOAA Response: NOAA has rewritten § 922.1 in line with the changes suggested by the commentators and does not feel any conflict exits.

(5) Two commentators felt that the criteria of § 922.21(b) underrated the importance of habitat and ecosystem protection.

NOAA Response: The criteria of § 922.21(b) have been rewritten slightly, in part to emphasize such protection.

(6) Two commentators felt that NOAA should specify the reasons for rejecting any recommended site for its List of Recommended Areas and should provide an appeal mechanism to the recommender.

NOAA Response: NOAA agrees with specifying the reasons for rejection but disagrees that an appeal mechanism is appropriate. Any site may be resubmitted for consideration with additional information. Section 922.21(a) has been rewritten to require that the reasons for rejection be specified and a new § 922.21(e) added to provide explicitly for resubmission.

(7) One commentator felt that alternative boundaries and management schemes should be developed prior to publication on the List of Recommended Areas.

NOAA Response: The commentator is placing too much significance of the inclusion on the List of Recommended Areas. Such analysis is premature and beyond the resources of the program. NOAA will develop this information during the review of sites selected as Active Candidates.

(8) One commentator suggested that the words "commercial fishing" be added after "recreational use" in § 922.21(b)(4) to reflect NOAA's responsibilities under the FCMA.

NOAA Response: NOAA feels that fishery management responsibility has been assigned to the National Marine Fisheries Service (NMFS) and the Regional Fishery Councils and, does not anticipate designating sanctuaries solely for fishery management purposes. Certain sanctuaries will include commercially valuable species in which case NOAA's role will involve coordination with the relevant councils. For example, the purpose of designating a sanctuary may include protection of the habitat of a commercially valuable species and sanctuary regulations may restrict certain fishing techniques to protect other marine resources, e.g. trawling to protect coral reefs.

(f) Section 922.22—Effect of Placement on the List.—(1) Five commentators requested clarification as to the effect of the placement of a recommended site on the List of Recommended Areas. Two commentators suggested that the effect of listing an area as an Active Candidate be included in this section.

NOAA Response: The section has been rewritten to emphasize that the List of Recommended Areas is primarily for informational purposes and to indicate that Active Candidates would normally be mentioned in an Environmental Impact Statement (EIS) prepared by any agency analyzing impacts of a proposed action in the area.

(g) Section 922.23—Selection of Active Candidates.—(1) Three commentators objected that the criteria for selection of Active Candidates was too broad. In particular, two objected to the test of "significance" in § 922.23(a).

NOAA Response: The issues raised are essentially the same as those raised in connection with the criteria of § 922.21 and are discussed under major issues above. NOAA feels that these criteria, when read in conjunction with the criteria of § 922.21, as rewritten, are as specific as possible.

(2) Four commentators suggested that time periods be established for the consideration of Active Candidates. One commentator was concerned about the time period prior to selection as an Active Candidate and suggested a 120 day period to ensure periodic review. The other commentators were concerned about the length of time that a candidate could remain upon the Active Candidates List without designation. No specific time limit was suggested.

NOAA Response: NOAA feels that first commentator overestimates the weight to be given to selection of a site for the List of Recommended Areas, and that no time limit should be established within which an area on the recommended list must become an Active Candidate in light of the large number of Recommended Areas anticipated. Section 922.24 does establish time limits for the review of Active Candidates leading up to the decision to prepare a Draft Environmental Impact Statement (DEIS). However no time limits for the completion of the EIS process are established. Since NOAA will proceed as quickly as possible with publication of the DEIS, and since Council on Environmental Quality (CEQ) regulations provide a detailed time sequence for DEIS review, no additional deadlines seem necessary.

(3) One commentator suggested that "the significance of area to the development of any energy facility necessary to the National interest" be added as a factor to be considered in the selection of Active Candidates.

NOAA Response: NOAA feels that this factor is taken into account by subsection (a)(6) requiring consideration of "the economic significance to the Nation of such additional resources and uses."

(4) One commentator suggested that the highest priority be given to areas believed to be important habitats for rare, endangered or threatened species.

NOAA Response: Habitat protection is emphasized already (see comment (e)(5) particularly for rare or endangered species—§ 922.21(b)(1)(a)). The factors taken into account in the selection of Active Candidates: e.g., the severity and imminence of threats, are also valid considerations.

(5) One commentator suggested that the availability of other regulatory authorities should be a separate, principal criterion for selecting Active Candidates to emphasize its significance (See also comment (a)(2).) Another reviewer objected to considering this criterion at all.

NOAA Response: NOAA feels that on balance the emphasis placed on existing regulations by § 922.23(a)(2) is the proper one.

(6) One commentator objected to establishing the value of an area in complementing other areas as a criterion for the selection of Active Candidates.

NOAA Response: NOAA believes that this is a valid consideration and will maximize the importance of the marine sanctuary program in relation to other government programs.

(7) One commentator suggested that priorities be set forth in terms of the significance of ecosystems at global, national and State levels.

NOAA Response. NOAA agrees with the general concept but does not feel that it is useful to specify this particular hierarchy in the regulations. The precise degree of significance could be debated in scientific communities and involving NOAA in these debates does not appear productive.

(8) One reviewer objected to examining cumulative impacts in determining the severity of potential threats to the resources.

NOAA Response: NOAA disagrees. Instances may exist where individual activities could not be said to pose a severe threat to the resources of an area, but the total number of such activities anticipated would pose such a threat.

(9) Two commentators suggested that specific justification for treating an area as significant to research be provided.

NOAA Response. There does not appear to be any need to require special justification for the importance of research.

(10) One reviewer requested further clarification of what constitutes adequate means available to support full review.

NOAA Response: This means simply adequate budget and personnel in the relevant NOAA program offices.

(11) Three commentators objected to the description of consultation set forth in § 922.23(b). Two claimed it appeared to make the consultations discretionary. The third suggested rephrasing to provide a more positive connotation.

NOAA Response: NOAA disagrees that there is any ambiguity as to whether the Assistant Administrator must consult with the named parties. The rephrasing suggested has been adopted.

(12) One commentator has suggested announcing the selection of an Active Candidate in local papers.

NOAA Response: NOAA will issue a press release for local area newspapers which should assure adequate publicity.

(h) Section 922.24—Review of Active Candidates.—(1) Three commentators suggested that this section specifiy that the workshops to discuss Active Candidates be held in the area or areas most significantly affected by the proposed designation.

NOAA Response: NOAA concurs. Section 922.24(a) has been rewritten to so provide.

(2) Two reviewers felt that alternative boundaries, management measures and other fairly detailed information must be provided prior to the holding of public workshops.

NOAA Responses: NOAA appreciates the importance of holding informed public meetings, but feels these commentators tend to confuse the function of the workshop with the function of the public hearing to be held on the Draft Environmental Impact Statement later in the process. In many cases, the public workshop will aid in the formulation of such options, and the attempt to provide them in advance of this first major public consultation may frustrate effective public involvement. NOAA will supply as much information as possible.

(3) One commentator suggested specifically providing that compensation under NOAA's public participation regulations may be available for the workshops.

NOAA Response: NOAA agrees. New § 922.1(f) states that compensation is available in appropriate circumstances and cross references the public participation regulations (15 CFR Part 904).

(4) One commentator suggested that § 922.24 specifically include affected land owners in the workshops.

NOAA Response: NOAA feels that the change is unnecessary since such individuals are clearly covered by "other interested persons."

(5) One commentator suggested that the hearing provided for in § 922.24(c) is at the wrong stage in the process and should be at the beginning of the site selection process.

NOAA Response: NOAA feels that the commentator is placing undue weight upon the selection of a site for the List of Recommended Areas and that it is more appropriate to hold the hearing when full information is available and the regulatory options are apparent. The time of the hearing is in line with the statutory requirement of § 302(e) of the Act. The public workshops at the early stages of evaluating an Active Candidate will answer the commentator's concern.

(6) One commentator suggested amending § 922.24(b) and § 922.26(a) to reflect that an EIS may not be required.

NOAA Response: NOAA intends to use the EIS process for disseminating information any time it proposes a sanctuary whether or not required under the National Environmental Policy Act (NEPA).

(7) One commentator suggested that if, following a public workshop, NOAA determines not to proceed with the DEIS, an announcement stating the reasons for the determination should be placed in the Federal Register.

NOAA Response: NOAA concurs and has amended § 922.24(b) appropriately.

(8) One commentator suggested appointing State and local citizen advisory councils to further the consultation process.

NOAA Response: NOAA agrees that in many cases such bodies may be helpful but does not feel it appropriate to require this in all cases. In addition the Federal Advisory Committee Act restricts NOAA's ability to appoint such committees.

(i) Section 922.25—Coordination with States.—(1) One commentator felt that the proposed regulations are too general in their provision for the necessary coordination procedure, particularly with respect to the preparation of the Designation document and regulations.

NOAA Response: The regulations fully involve the relevant parties in the process of preparation of the Designation and regulations. §§ 922.24(b) and 922.26(a) have been rewritten to clarify this role.

(2) One reviewer objected to the failure of § 922.25(a)(3) to state that sanctuary designations must be consistent with the States' coastal zone management programs.

NOAA Response: NOAA has reworded this section to refer to the

necessity for consistency with a State's approved coastal zone management program.

(j) Section 922.26—Designation.—(1) Three commentators complained that the relationship between the Designation and the regulations implementing the Designation was unclear, and particularly that the opportunity for interested persons to participate in the development of the regulations was not clearly established.

NOAA Response: NOAA has rewritten § 922.26(a) as well as § 922.24(b), Review of Active Candidates, to clarify the relationship and emphasize the public's role in the development of the Designation and regulations particularly at the workshops and through the DEIS process prior to designation.

(2) Three commentators addressed the use of the Designation document as set forth in this section. Two commentators favored the device as a method for avoiding overregulation. A third commentator objected that NOAA should not limit its ability to regulate activities in a sanctuary. Other commentators discussed generally the need to avoid overregulation but did not specifically recognize the Designation document as a method to accomplish this end.

NOAA Response: NOAA feels that the Designation document in the form described in the regulations is an important and useful mechanism to focus public and agency attention on the need for regulations and the appropriate limits for each regulation.

(3) Three commentators discussed the veto authority given to the Governor of a State whose waters are included in the sanctuary. One favored and one opposed this authority. The third felt that § 922.26(d) allowed designation, despite a Governor's objection.

NOAA Response: The Governor's authority is statutory. See § 302(b) of the Act. NOAA disagrees that under either the statute or § 922.26(d) it can designate a sanctuary in State waters despite the Governor's objection.

(4) Two commentators suggested specifying a time limit for the Governor's certification.

NOAA Response: Section 302(b) of the Act gives a governor 60 days to certify unacceptability. This limit has been added for clarity.

(5) Two commentators suggested that NOAA utilize some form of "emergency designation." One commentator suggested promulgating some form of regulations imposing, in essence, a moratorium on degrading activities pending designation. A second commentator favored expediting the placement of a site on the Active Candidates List (i.e. within 30 days of receipt of the recommendation).

NOAA Response: Under the Act, NOAA is empowered to control activities in an area only after its designation as a sanctuary. With respect to expedited processing, NOAA can expedite its procedures for any recommended site so long as the required consultations and evaluations took place.

(6) One commentator thought the Designation should be more specific as to the extent to which activities in a sanctuary may be regulated.

NOAA Response: Certain Designations may provide such specificity, but NOAA disagrees that it is desirable or even possible in all cases.

(7) One commentator suggested it might be useful to describe in a Designation other regulatory programs applicable to the sanctuary area.

NOAA Response: NOAA feels that it is more appropriate to describe such regulatory programs in the EIS.

(8) One commentator suggested that the Designation should be the subject of a separate subpart to stress that selection of an Active Candidate does not necessarily lead to designation.

NOAA Response: NOAA feels that a separate section is adequate to provide clarity, and that the concept is stressed throughout.

(9) One commentator suggested rewriting § 222.26(a) to provide explicitly for the receipt of evidence from appropriate parties including citizens of the affected state.

NOAA Response: NOAA feels such addition is superfluous.

(10) Two commentators objected to NOAA's failure to preempt each and every regulatory authority in the area of a designated sanctuary and recommended retaining the requirement that all other authorizations be certified before they are valid.

NOAA Response: NOAA agrees that its authority could preempt other regulatory authorities in the area, but sees advantages in terms of providing clarity to potential users and, generally, of reduced bureaucracy, in not doing so unless necessary.

(11) One commentator suggested that § 922.26(c) provide explicitly that multiple use be permitted provided it does not cause significant adverse impact.

NOAA Response: This concept is clearly established by § 922.1 and § 922.26 is built on this principle.

(12) One commentator suggested that the concurrence of other affected Federal agencies should be required prior to the promulgation of any regulations.

NOAA Response: NOAA disagrees. Consultation with other Federal agencies is required by statute. Presidential approval of the designation is the statutory mechanism to insure balancing the interests of all Federal agencies. It takes the place of other mechanisms for resolving conflicts such as the mediation provided in the Coastal Zone Management Act.

(13) One commentator suggested formal notice of a designation be provided in the Federal Register.

NOAA Response: NOAA concurs. See new § 922.26(e).

(k) Section 922.27—Boundaries

(1) Seven commentators objected to the provision for altering boundaries and expressed concern about appropriate consultation.

NOAA Response: This section has been consolidated with section 922.21 to address this concern. See also discussion under Major Issues above.

(2) One commentator expressed concern that criteria 922.27(a)(2) was too broad and too open to subjective judgment.

NOAA Response: The determination of what constitutes an adequate buffer zone to protect the resources of a sanctuary is necessarily made on a case-by-case basis. The determination will be made through the full review in the designation process, thus minimizing subjectivity.

(l) Section 922.30—Penalties

(1) Two commentators thought this section and § 922.31 should specify the agency responsible for enforcement.

NOAA Response: Different agencies will have enforcement responsibilities. The individual regulation for each sanctuary is the proper place to specify such responsibility. The Coast Guard will be responsible for enforcement in most sanctuaries and a specific reference to this agency's enforcement programs has been included in section 922.1(e).

(2) One commentator felt the regulations should specifically provide for the delegation of enforcement and administration to State agencies for sanctuaries located off their shores. The commentator believed the existing regulations provided explicitly for such delegation.

NOAA Response: The existing regulations do not provide explicitly for delegation, NOAA agrees that delegation may be appropriate in individual sanctuaries and will provide for it in the regulations governing these sanctuaries.

Revised Regulations Effective Immediately

The regulations described above constitute general statements of policy and rules of procedure or practice governing the administration of the marine sanctuary program by NOAA. For the most part, the practices and procedures have evolved under the existing regulations and are being followed currently. Consequently, to delay the effective date for thirty days would simply result in additional confusion, and NOAA hereby finds for good cause, in accordance with 5 U.S.C. 553(d), that such 30 days delay prior to the effective date is unnecessary. The regulations are effective on publication in the Federal Register.

Date: July 23, 1979.

R. L. Carnahan,

Deputy Assistant Administrator for Administration.

In consideration of the foregoing, Part 922 is revised as follows:

PART 922—MARINE SANCTUARIES

Subpart A—General

Subpart B—Initial Review of Areas Recommended as Sanctuaries

Subpart C—Selection of Active Candidates and Designation of Sanctuaries

Subpart D—Enforcement

Authority: Title III, Public Law 95–532, as amended; 86 Stat. 1061 (16 U.S.C. 1431–1434).

Subpart A—General

§ 922.189Policy and Objectives.

(a) The purpose of the marine sanctuaries program is to identify areas in the ocean from the shore to the edge of the continental shelf and in the Great Lakes that are distinctive for their conservation, recreational, ecological or esthetic values, and to preserve and restore such areas by designating them as marine sanctuaries and providing appropriate regulation and management.

(b) The primary emphasis of the program will be the protection of natural and biological resources, and in most cases higher priority will be afforded candidate sites containing these resources.

(c) The presence of actual or potential conflicts among existing or potential human uses of a candidate site is not of itself a basis for designating the site as a marine sanctuary. Human activities will be allowed within a designated sanctuary to the extent that such activities are compatible with the purposes for which the sanctuary was established, based on an evaluation of whether the individual or cumulative impacts of such activities may have a significant adverse effect on the resource value of the sanctuary.

(d) The marine sanctuary program will be fully coordinated with the coastal zone management and estuarine sanctuary programs established under the Coastal Zone Management Act of 1972, as amended 16 U.S.C. 1451 *et seq.* (The estuarine sanctuary program, 16 U.S.C. 1461, authorizes grants for the acquisition, development or operation of estuarine areas as natural field laboratories. See regulations at 15 CFR Part 921).

(e) The marine sanctuaries program will be conducted also in close cooperation with other related Federal and State programs, including those of the Regional Fishery Management Councils under the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*; the marine mammal protection and endangered species programs of the National Marine Fisheries Service, under the Marine Mammal Protection Act, as amended, 16 U.S.C. 1361 *et seq.* and the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*; leasing programs of the Department of the Interior for the Outer Continental Shelf under the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1331 *et seq.*; relevant programs of the Department of Energy; and the regulatory and enforcement programs of the United States Coast Guard.

(f) A basic objective of the marine sanctuaries program is to obtain the maximum public participation throughout all the stages that may lead to the designation of a sanctuary. To further this purpose NOAA may make funds available to compensate eligible persons for the costs of participation in certain proceedings in accordance with NOAA regulations at 15 CFR Part 904.

§ 922.2 Definitions.

(a) "Act" means Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431–1434.

(b) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration, United States Department of Commerce.

(c) "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, United States Department of Commerce, or his designee.

(d) "Continental Shelf" means the Continental Shelf, as defined in the Convention on the Continental Shelf, 15 U.S.T. 74 (TIAS 5578), which lies adjacent to any of the several states or any territory or possession of the United States, or the Trust Territory of the Pacific Islands.

(e) The "Great Lakes" means the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes.

(f) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal Government, or any State, local or regional unit of government.

§ 922.10 Effect of marine sanctuary designation.

The designation of a marine sanctuary and the regulations implementing it are binding on any person subject to the jurisdiction of the United States. Designation does not in any case constitute any claim of territorial jurisdiction on the part of the United States, and the regulations implementing it apply to foreign citizens only to the extent consistent with recognized principles of international law or authorized by international agreement.

Subpart B—Initial Review of Areas Recommended as Sanctuaries

§ 922.20 Submission of recommendations.

(a) Any person (including NOAA employees in their official capacity or otherwise) may recommend a site to be considered for potential designation as a marine sanctuary. Recommendations should be addressed to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric

Administration, 3300 Whitehaven St., N.W., Washington, D.C. 20235.

Further information can be obtained by contacting this office.

(b) Recommendations should be submitted in the following format:

Site recommended
General description of area
Approximate coordinates
Area in square miles
Name of person or organization submitting recommendation
Principal Contact
  Name, Title
  Address
  Telephone number
Detailed description of the feature or features which make the site distinctive (See sec. 922.21)
Available data on the resources and site
Summary of existing research and other data to support description
  Principal data deficiencies
Description of past, present and prospective uses of site
Impacts of present and prospective uses on site and its distinctive features
Probable effects of marine sanctuary designation and recommended regulations
  Present uses of resources
  Future uses of resources
  Uses of adjacent areas (including those on shore)
Management
  Summary of who should manage area and why
  Summary of activities which must be regulated to ensure protection of distinctive features

(c) The Assistant Administrator may request such additional information as is necessary to make the determination called for by §§ 922.21 and 922.23.

§ 922.21 Analysis of recommendations.

(a) Within 3 months of receiving a recommendation for any site the Assistant Administrator shall review the site in accordance with the criteria of subsection (b) to determine if it should be placed on the List of Recommended Areas. The Assistant Administrator shall promptly notify the recommender in writing of his determination. In the event the site is rejected, the Assistant Administrator shall include a statement of the reasons for the rejection and indicate that the recommendation may be resubmitted with additional information. Notification of the placement of any site on the List will be published in the Federal Register.

(b) To be eligible for placement on the List of Recommended Areas for marine sanctuaries a candidate area shall contain one or more of the following:

(1) Important habitat on which any of the following depend for one or more life cycle activity, including breeding, feeding, rearing young, staging, resting or migrating:

(i) Rare, endangered or threatened species; or

(ii) Species with limited geographic distribution, or

(iii) Species rare in the waters to which the Act applies, or

(iv) Commercially or recreationally valuable marine species.

(2) A marine ecosystem of exceptional productivity indicated by an abundance and variety of marine species at the various tropic levels in the food web.

(3) An area of exceptional recreational opportunity relating to its distinctive marine characteristics.

(4) Historic or cultural remains of widespread public interest.

(5) Distinctive or fragile ecological or geologic features of exceptional scientific research or educational value.

(c) Sanctuary boundaries should include an area sufficient to provide reasonable assurance that the resource value of the area can be protected against degradation or destruction. The boundary will not include an area greater than that appropriate to protect the resource. The determination of boundaries should consider the following elements, depending on the resource values that justify establishing the sanctuary:

(1) The range and interrelations of key elements of the ecosystem,

(2) The potential for adverse impact from human activities at some distance from where they are conducted, whether as a result of normal operations or foreseeable accidents,

(3) The economic, safety, and other effects of displacing certain human activities to other locations to the extent such displacement is likely to occur,

(4) The feasibility and cost of conducting surveillance and enforcement activities in the area.

(d) Where overlapping or adjacent sites are recommended or where the recommended boundaries of an area appear either excessive or inadequate to protect the identified features, the Assistant Administrator may prepare a combined or revised description for placement on the List of Recommended Areas.

(e) All recommendations submitted prior to the effective date of these regulations will be reviewed in accordance with this section and an initial List of Recommended Areas will be published in the Federal Register within 3 months of such date. Thereafter the List will be updated at least semi-annually and a cumulative List published in the Federal Register.

§ 922.22 Effect of placement on the List of Recommended Areas or Active Candidates.

(a) The List of Recommended Areas provides a source of information on sites believed to contain some resource value and may be helpful to Federal agencies and others planning or conducting activities that affect these sites. It is anticipated that, normally, once a site is selected as an Active Candidate, such status will be mentioned in an agency's Environmental Impact Statement (EIS) covering such an activity.

(b) Placement of a site on either List does not establish any regulatory controls, which can be established only after designation in accordance with § 922.26. Listing is a prerequisite for designation as a marine sanctuary but many more sites will be listed than designated and listing does not imply that designation will ever occur.

Subpart C—Selection of Active Candidates and Designation of Sanctuaries

§ 922.23 Selection of Active Candidates.

(a) A site on the List of Recommended Areas will be selected as an Active Candidate for designation as a marine sanctuary on the basis of:

(1) The significance of the resources identified during review for listing under § 922.21(b);

(2) The extent to which the means are available to the Assistance Administrator to support full review within the time specified in § 922.24; and

(3) The following additional factors:

(i) The severity and imminence of existing or potential threats to the resources including the cumulative effect of various human activities that individually may be insignificant.

(ii) The ability of existing regulatory mechanisms to protect the values of the sanctuary and the likelihood that sufficient effort will be devoted to accomplishing those objectives without creating a sanctuary.

(iii) The significance of the area to research opportunities on a particular type of ecosystem or on marine biological and physical processes.

(iv) The value of the area in complementing other areas of significance to public or private programs with similar objectives, including approved Coastal Zone Management programs.

(v) The esthetic qualities of the area.

(vi) The type and estimated economic value of the natural resources and human uses within the area which may be foregone as a result of marine sanctuary designation, taking into

account the economic significance to the nation of such resources and uses and the probable impact on them of regulations designed to achieve the purposes of sanctuary designation.

(vii) The economic benefits to be derived from protecting or enhancing the resources within the sanctuary.

(b) Before selecting a site as an Active Candidate, the Assistant Administrator shall consult on a preliminary basis with relevant Federal agencies, state and local officials including port authorities, Regional Fishery Management Councils and other interested persons including the recommender to determine the nature of potential impacts in the area and to gather additional information as necessary to conduct the review process.

(c) Selection of any site as an Active Candidate for designation shall be announced in the **Federal Register** and all Active Candidates shall be placed on a separate list published and updated concurrently with the List of Recommended Areas as provided in § 922.21(e).

(d) Any site for which a Public Workshop as described in § 922.24(a) has been held or for which such a workshop has been scheduled prior to the effective date of these regulations, shall be considered an Active Candidate. These Active Candidates shall be announced in the **Federal Register** as soon as practicable after the effective date of these regulations, and prerequisites to Active Candidate status will be considered satisfied by inclusion in this announcement.

§ 922.24 Review of active candidates.

(a) Within six months of selection as an Active Candidate as specified in § 922.23, the Assistant Administrator shall conduct one or more Public Workshops in the area or areas most affected to solicit the views of interested persons to aid in determining whether the site should be further considered for Designation and whether any modifications to the recommendation may be appropriate. This workshop shall be before and in addition to the public hearings required under section 302(e) of the Act.

(b) Based on the views obtained at the Public Workshop and other relevant information, the Assistant Administrator shall determine whether the site should continue to be an Active Candidate and shall announce that decision in the **Federal Register** within 90 days of the last Public Workshop. If the site will not continue to be an Active Candidate, the notice shall specify the reasons. If the site continues to be an Active Candidate, the Assistant Administrator shall prepare a draft Environmental Impact Statement (DEIS), containing a draft Designation document and regulations implementing the Designation in consultation with relevant Federal, State and local officials, Regional Fishery Management Council members and other interested persons. At or about the same time, the Assistant Administrator will publish the proposed Designation and regulations in the **Federal Register** in acordance with the Administrative Procedure Act.

(c) No less than 30 days after the Environmental Protection Agency (EPA) publishes a Notice of Availability in the **Federal Register,** the Assistant Administrator shall hold at least one public hearing in the area or areas most affected by the proposed designation in accordance with section 302(e) of the Act to consider the draft Designation, proposed regulations and DEIS.

§ 922.25 Coordination with States.

(a) Following the receipt of any recommendation, the Assistant Administrator shall notify the designated Coastal Zone Management Agency of an affected State or States with an approved Coastal Zone Management Program.

(b) The Assistant Administrator shall make every effort to consult and cooperate with affected States through the entire review and consideration process. In particular the Assistant Administrator shall

(1) Consult with the relevant State officials prior to selection of an Active Candidate for consideration, pursuant to § 922.23(b),

(2) Ensure that any State agency designated under sections 305 or 306 the Coastal Zone Management Act of 1972 and any other appropriate State agency is consulted prior to holding any Public Workshop pursuant to § 922.24(a) or public hearing pursuant to § 922.24(c), and

(3) Ensure that such Public Workshops and Public Hearings include consideration of the relationship of a proposed designation to State waters and the consistency of the proposed designation with an approved State Coastal Zone Management Program.

§ 922.26 Designation.

(a) In response to the comments received, including those at the Public Hearing described in § 922.24(c), the Assistant Administrator shall prepare a final environmental impact statement including the Designation and implementing regulations and file it with EPA. After final consultation with all appropriate Federal agencies and Regional Fishery Management Councils, the Secretary shall transmit to the President for approval the proposed Designation prior to making the site a Marine Sanctuary.

(b) The Designation shall specify by its terms the geographic coordinates of the Sanctuary area, its distinctive features that require protection, and the types of activities that may be subject to regulation. The terms of the Designation may be modified only by the same procedures through which the original designation was made.

(c) The regulations shall be consistent with and implement the terms of the Designation and shall set forth the limits of human activities within the sanctuary and procedures for the review and certification of permits, licenses or other authorizations pursuant to other authorities. All amendments to these regulations must remain consistent with the Designation.

(d) Where essential to prevent immediate, serious and irreversible damage to the resources of a sanctuary, activities other than those listed in the Designation may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of the Designation would be sought.

(e) If, within 60 days of the publication of the Designation as provided in paragraph (e), the Governor of a state whose waters are included in the sanctuary certifies that any terms of the Designation are unacceptable, such terms and any regulations implementing them shall not become effective for the part of the sanctuary in state waters until the certification is withdrawn. If the Governor so certifies, the Designation may be withdrawn if, in the opinion of the Assistant Administrator, the sanctuary, as modified, no longer achieves the objectives specified in the Act, the regulations, and the Designation.

(f) The Assistant Administrator shall announce the designation of a Sanctuary and publish the Designation document and implementing regulations in the **Federal Register.**

Subpart D—Enforcement

§ 922.30 Penalties.

Any person subject to the jurisdiction of the United States who violates any regulation issued pursuant to the Act shall be liable for a civil penalty of not more than $50,000 for each such violation. Each day of a continuing violation shall constitute a separate

violation. No penalty may be assessed under this section until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Administrator, will commence action in the appropriate District Court of the United States in order to collect the penalty and to seek such other relief as may be appropriate. A vessel used in the violation of a regulation issued pursuant to the Act will be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any District Court of the United States have jurisdiction thereof. Pursuant to section 303(a) of the Act, the District Courts of the United States having jurisdiction to restrain a violation of the regulations issued pursuant to the Act, and to grant such other relief as may be appropriate.

§ 922.31 Notice of violation.

Upon receipt of information that any person has violated any provision of this title, the Administrator shall notify such person in writing of the violation with which charged, and of the right to demand a hearing to be held in accordance with § 922.32. The notice of violation shall inform the person of the procedures for requesting a hearing and may provide that, after a period of 30 days from receipt of the notice, any right to a hearing will be deemed to have been waived.

§ 922.32 Enforcement hearings.

Hearings requested under § 922.31 shall be held not less than 60 days after the request is received. Such hearings shall be on the record before a hearing officer. Parties may be represented by counsel, and shall have the right to submit motions, to present evidence in their own behalf, to cross examine adverse witnesses, to be apprised of all evidence considered by the hearing officer, and, upon payment of appropriate costs, to receive copies of the transcript of the proceedings. The hearing officer shall rule on all evidentiary matters and on all motions, which shall be subject to review pursuant to § 922.33.

§ 922.33 Determinations.

Within 30 days following conclusion of the hearing, the hearing officer shall make findings of facts and recommendations to the Administrator, unless such time limit is extended by the Administrator for good cause. When appropriate, the hearing officer may recommend a penalty, after consideration of the gravity of the violation, prior violations by the person charged, and the demonstrated good faith by such person in attempting to achieve compliance with the provisions of the title and regulations issued pursuant thereto. A copy of the findings and any recommendation of the hearing officer shall be provided to the person charged at the same time they are forwarded to the Administrator. Within 30 days of the date on which the hearing officer's findings and recommendations are forwarded to the Administrator, any party objecting thereto may file written exceptions with the Administrator.

§ 922.34 Final action.

A final order on a proceeding under this part shall be issued by the Administrator no sooner than 30 days following receipt of the findings and recommendations of the hearing officer. A copy of the final order shall be served by registered mail (return receipt requested) on the person charged or his representative.

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FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-2976]

International Inventors Incorporated, East, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other thing, requires an Alexandria, Va. idea promotion firm and its principal officer to cease failing to provide fair and thorough evaluations as to the commercial feasibility of customers' ideas; and misrepresenting that they successfully promote and negotiate with interested manufacturers on clients' behalf; that they secure lucrative contracts for clients through such efforts; and that the Document Disclosure Program of the United States Patent and Trademark Office protects clients' ideas prior to the filing of a formal patent application. The order requires that prescribed disclosures regarding the financial success of previous clients, the lack of legal protection for ideas, and the advisability of consulting with a patent attorney, before signing an agreement be included in contracts and promotional material; and prohibits the company from accepting any fees for promotional services, other than a percentage of royalties earned through its endeavors. Additionally, the firm is required to maintain particular records for a specified period, and institute a continuing surveillance program designed to ensure compliance with the terms of the order.

DATES: Complaint and order issued July 5, 1979.[1]

FOR FURTHER INFORMATION CONTACT: FTC/PL, Edward D. Steinman, Washington, D.C. 20580. (202) 523-3948.

SUPPLEMENTARY INFORMATION: On Tuesday, March 27, 1979, there was published in the Federal Register, 44 FR 18231, a proposed consent agreement with analysis In the Matter of International Inventors Incorporated, East, a corporation, and James H. Haren, individually and as an officer of said corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 10 CFR 13, are as follows: Subpart-Advertising Falsely or Misleading: §13.15 Business status, advantages or connections; 13.15-5 Advertising and promotional services; 13.15-20 Business methods and policies; 13.15-30 Connections or arrangements with others; 13.15-80 Government connections; 13.15-100 History; 13.15-195 Nature; 13.15-220 Patent or other rights; 13.15-245 Prospects; 13.15-250 Qualifications and abilities; 13.15-255 Reputation, success or standing; 13.15-265 Service; § 13.42 Connection of others with goods; § 13.60 Earnings and profits; § 13.85 Government approval, action, connection or standards; § 13.90 History of product or offering; § 13.143 Opportunities; § 13.145 Patent or other rights; § 13.160 Promotional sales plans; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.250 Success, use or standing; § 13.275 Undertakings in general. Subpart-Contracting For Sale in Any Form Binding On Buyer Prior To End Of Specified Time Period: § 13.527 Contracting for sale in any form binding on buyer prior to end of specified time period. Subpart-Corrective Actions and/or Requirements: §13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-40 Furnishing information to media; 13.533-45 Maintain records; 13.533-55 Refunds, rebates and/or credits. Subpart-Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1370 Business

[1] Copies of the Complaint and Decision and Order filed with the original document.

methods, policies, and practices; § 13.1395 Connections and arrangements with others; § 13.1425 Government connection; § 13.1435 History; § 13.1490 Nature; § 13.1540 Reputation, success or standing; § 13.1553 Services.—Goods: § 13.1615 Earnings and profits; § 13.1650 History of product; § 13.1675 Law or legal requirements; § 13.1700 Patent rights; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1755 Success, use, or standing; § 13.1760 Terms and conditions; § 13.1760–50 Sales contract; § 13.1765 Undertakings, in general.—Promotional Sales Plans: § 13.1830 Promotional sales plans. Subpart-Neglecting, Unfairly or Deceptively, To Make Material Disclosure: §13.1854 History of products; § 13.1863 Limitations of product; § 13.1870 Nature; § 13.1892 Sales contract, right-to-cancel provision; § 13.1892-2 Commencing contractual obligations prior to end of cooling-off period; § 13.1895 Scientific or other relevant facts; § 13.1905 Terms and conditions; § 13.1905–50 Sales contract. Subpart-Offering Unfair, Improper and Deceptive Inducements To Purchase or Deal: § 13.1935 Earnings and profits; § 13.2015 Opportunities in product or service; § 13.2063 Scientific or other relevant facts; § 13.2090 Undertakings, in general.

(Sec. 6, 38 Stat. 721 (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended (15 U.S.C. 45).)

Carol M. Thomas,

Secretary.

[FR Doc. 79-23575 Filed 7-30-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 520

[Docket No. 79N-0213]

Oral Dosage Form New Animal Drugs Not Subject to Certification; Oxytetracycline Hydrochloride Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the animal drug regulations for oxytetracycline hydrochloride capsules to indicate those conditions of use for which approvals for identical products need not include certain types of efficacy data. These conditions of use were classified as probably effective as a result of a National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group evaluation of the product. In lieu of certain efficacy data, approval may require submission of bioequivalence or similar data. An earlier **Federal Register** publication has reflected this product's compliance with the conclusions of the review.

EFFECTIVE DATE: July 31, 1979.

FOR FURTHER INFORMATION CONTACT: Donald A. Gable, Bureau of Veterinary Medicine (HFV–100), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4313.

SUPPLEMENTARY INFORMATION: The NAS/NRC review of a drug product containing oxytetracycline and glucosamine was published in the **Federal Register** of August 6, 1970 (35 FR 12564). In that document, the Academy concluded, and FDA concurred, that the antimicrobial effect of oxytetracycline has been established but the claims for glucosamine should be documented or dropped.

That announcement was issued to inform holders of new animal drug applications (NADA's) of the findings of the Academy and the agency, and to inform all interested persons that such articles could be marketed if they were the subject of approved NADA's and otherwise complied with the requirements of the Federal Food, Drug, and Cosmetic Act.

Pfizer & Co., Inc., 235 East 42d St., New York, NY 10017, responded to the notice by submitting a supplemental NADA (7–879V) deleting glucosamine from the formulation and providing current information covering manufacturing and controls and revising the labeling for the safe and effective use of the product in dogs and cats. The supplemental application was approved by regulation issued in the **Federal Register** of April 25, 1974 (39 FR 14591). The regulation reflecting this approval (21 CFR 135c.120, recodified 21 CFR 520.1660b) did not specify those conditions of use that were NAS/NRC approved.

This document amends the regulations to indicate those conditions of use for which approvals for identical products need not include certain types of efficacy data required for approval by § 514.111(a)(5)(vi) of the new animal drug regulations. In lieu of those data, approval of such products may be obtained if bioequivalency or similar data are submitted as suggested in the guideline for submitting NADA's for generic drugs reviewed by the NAS/NRC. The guideline is available from the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.1660b by adding after paragraphs (c)(1), (2), and (3) the footnote reference "[1]" and by adding at the end of the section the footnote to read as follows:

§ 520.1660b Oxytetracycline hydrochloride capsules.

* * * * *

(c) *Conditions of use.* (1) * * * [1]

(2) * * * [1]

(3) * * * [1]

Effective date. This regulation is effective July 31, 1979.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: July 24, 1979.

Marvin A. Narcross,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 79-23504 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 520

[Docket No. 79N-0225]

Oral Dosage Form New Animal Drugs Not Subject to Certification; Trifluomeprazine Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the animal drug regulations for trifluomeprazine tablets to indicate those conditions of use for which approvals for identical products need not include certain types of efficacy data. These conditions of use were classified as probably effective as a result of a National Academy of Sciencies/National Research Council (NAS/NRC), Drug Efficacy Study Group evaluation of the product. In lieu of certain efficacy data, approval may require submission of bioequivalence or similar data. An earlier **Federal Register** publication has reflected this product's compliance with the conclusions of the review.

EFFECTIVE DATE: July 31, 1979.

FOR FURTHER INFORMATION CONTACT: Donald A. Gable, Bureau of Veterinary Medicine (HFV–100), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4313.

[1] These conditions are NAS/NRC reviewed and deemed effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

SUPPLEMENTARY INFORMATION: The NAS/NRC review of this product was published in the Federal Register of November 18, 1969 (34 FR 18394). In that document, the Academy concluded, and the Food and Drug Administration (FDA) concurred, that the product was probably effective as a tranquilizer for veterinary use.

That announcement was issued to inform holders of new animal drug applications (NADA's) of the findings of the Academy and the agency, and to inform all interested persons that such articles could be marketed if they were the subject of approved NADA's and otherwise complied with the requirements of the Federal Food, Drug, and Cosmetic Act.

Norden Laboratories, Lincoln, NE 68501, responded to the notice by submitting a supplemental NADA (12-746V) providing current information covering manufacturing and controls and revising the labeling for the safe and effective use of the product as a tranquilizer for dogs. The supplemental application was approved by a regulation issued in the Federal Register of October 3, 1972 (37 FR 20683). The regulation reflecting this approval (21 CFR 135c.84 recodified 21 CFR 520.2560) did not specify those conditions of use that were NAS/NRC approved.

This document amends the regulations to indicate those conditions of use for which approvals for identical products need not include certain types of efficacy data required for approval by § 514.111(a)(5)(vi) of the animal drug regulations. In lieu of those data, approval of such products may be obtained if bioequivalency or similar data are submitted as suggested in the guideline for submitting NADA's for generic drugs reviewed by the NAS/NRC. The guideline is available from the office of the Hearing Clerk (HFA-305), Rm. 4-65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.2560 by adding after paragraph (d) (1) and (2) the footnote reference "[1]" and by adding at the end of the section the footnote to read as follows:

§ 520.2560 Trifluomeprazine tablets.

* * * * *

(d) *Conditions of use.* (1) * * *[1]

(2) * * *[1]

Effective date. This regulation is effective July 31, 1979.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: July 24, 1979.

Marvin A. Narcross,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 79-23503 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-03-M

[1] These conditions are NAS/NRC reviewed and deemed effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

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21 CFR Part 524

[Docket No. 79N-0212]

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Prednisolone Sodium Phosphate-Neomycin Sulfate Ophthalmic Ointment

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: This document amends the animal drug regulations for prednisolone sodium phosphate-neomycin sulfate opthalmic ointment to indicate those conditions of use for which approvals for identical products need not include certain types of efficacy data. These conditions of use were classified as probably effective as a result of a National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group evaluation of the product. In lieu of certain efficacy data, approval may require submission of bioequivalence or similar data. An earlier Federal Register publication has reflected this product's compliance with the conclusions of the review.

EFFECTIVE DATE: July 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Donald A. Gable, Bureau of Veterinary Medicine (HFV-100), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: The NAS/NRC review of this poduct was published in the Federal Register of July 23, 1970 (35 FR 11826). In that document, the Academy concluded, and FDA concurred, that the product was probably effective for use in superficial ocular inflammations or infections limited to the conjunctiva or the anterior segment of the eye of dogs and cats, such as those associated with allergic reactions or gross irritants.

That announcement was issued to inform holders of new animal drug applications (NADA's) of the findings of the Academy and the agency, and to inform all interested persons that such articles could be marketed if they were the subject of approved NADA's and otherwise complied with the requirements of the Federal Food, Drug, and Cosmetic Act.

Merck Sharp & Dohme Research Laboratories, Division of Merck & Co. Inc., Rabway, NJ 07065, responded to the notice by submitting a supplemental NADA (11-437V) providing current information covering manufacturing and controls and revising the labeling for the safe and effective use of the product on dogs and cats. The supplemental application was approved by regulation issued in the Federal Register of January 22, 1973 (38 FR 2173). The regulation reflecting this approval (21 CFR 135a.20, recodified 21 CFR 524.1883) did not specify those conditions of use that were NAS/NRC approved.

This document amends the regulations to indicate those conditions of use for which approvals for identical products need not include certain types of efficacy data required for approval by § 514.111(a)(5)(vi) of the animal drug regulations. In lieu of those data, approval of such products may be obtained if bioequivalency or similar data are submitted as suggested in the guideline for submitting NADA's for generic drugs reviewed by the NAS/NRC. The guideline is available from the office of the Hearing Clerk (HFA-305), Rm. 4-65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 524 is amended in § 524.1883 by adding after paragraph (c) (1), (2), (3), and (4) the footnote reference "[1]" and by adding at the end of the section the footnote to read as follows:

§ 524.1883 Prednisolone sodium phosphate-neomycin sulfate ophthalmic ointment.

* * * * *

(c) *Conditions of use.* (1) * * *[1]

(2) * * *[1]

(3) * * *[1]

(4) * * *[1]

Effective date. This regulation is effective July 31, 1979.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

[1] These conditions are NAS/NRC reviewed and deemed effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

Dated: July 24, 1979.

Marvin A. Narcross,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 79-23505 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 546

[Docket No. 79-0220]

Tetracycline Antibiotic Drugs for Animal Use: Tetracycline Oral Liquid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the regulation for tetracycline oral liquid to indicate those conditions of use for which approvals for identical products need not include certain types of efficacy data. These conditions of use were classified as probably effective as a result of a National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Group evaluation of the product. In lieu of certain efficacy data, approval may require submission of bioequivalence or similar data. An earlier Federal Register publication has reflected this product's compliance with the conclusions of the review.

EFFECTIVE DATE: July 31, 1979.

FOR FURTHER INFORMATION CONTACT: Donald A. Gable, Bureau of Veterinary Medicine (HFV-100), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: The NAS/NRC review of this product was published in the Federal Register of July 8, 1970 (35 FR 10966). In that document the Academy concluded, and FDA concurred, that the product Panmycin Aquadrops was probably effective for the treatment of animal diseases when such diseases are caused by pathogenic microorganisms sensitive to tetracycline hydrocholoride.

The announcement was issued to inform holders of new animal drug applications (NADA's) of the findings of the Academy and the agency, and to inform all interested persons that such articles could be marketed if they were the subject of approved NADA's and otherwise complied with the requirements of the Federal Food, Drug, and Cosmetic Act.

The Upjohn Co., Kalamazoo, MI 49001, responded to the notice by submitting a supplemental NADA (65-060V) providing current information covering manufacturing and controls and revising the labeling for the safe and effective use of the product in treating infections in dogs and cats. The supplemental application was approved by regulation published in the Federal Register of March 15, 1974 (39 FR 9933). The regulation reflecting this approval (21 CFR 135c.125, recodified 21 CFR 546.180e(c)) did not specify those conditions of use that were NAS/NRC approved.

This document amends the regulations to indicate those conditions of use for which approvals for identical products need not include certain types of efficacy data required for approval by § 514.111(a)(5)(vi) of the animal drug regulations. In lieu of those data, approval of such products may be obtained if bioequivalency or similar data are submitted as suggested in the guideline for submitting NADA's for generic drugs reviewed by the NAS/NRC. The guideline is available from the office of the Hearing Clerk (HFA-305), Rm. 4-65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 546, § 546.180e, is amended by adding after paragraphs (c)(5)(ii)(*a*), (*b*), and (*c*) the footnote reference "[1]" and by adding at the end of the section the footnote to read as follows:

§ 546.180e Tetracycline oral liquid.

* * * * *

(c) * * *

(5) * * *

(ii) *Dogs and cats*—(*a*)* * *[1]

(*b*) * * *[1]

(*c*) * * *[1]

* * * * *

Effective date. This regulation is effective July 31, 1979.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: June 24, 1979.

Marvin A. Narcross,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 79-23506 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-03-M

[1] These conditions are NAS/NRC reviewed and deemed effective. Applications for these uses need not include effectiveness data as specified in § 514.111 of this chapter, but may require bioequivalency and safety information.

21 CFR Part 1000

[Docket No. 76N-0055]

Diagnostic X-ray Systems Assembly and Reassembly; Suspension of Regulation

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending 21 CFR 1000.16 by suspending those provisions of the regulation that would have, effective August 1, 1979, prohibited (1) the assembly of uncertified components into any diagnostic X-ray system or (2) the reassembly of uncertified components associated with a change of ownership and location. The agency continues indefinitely the provisions permitting installation of uncertified components into existing systems whose components are all uncertified and the provisions permitting continued reassembly of uncertified equipment. This action is taken because the agency is considering the need to amend the assembly/reassembly regulation but cannot publish an amendment before the August 1, 1979, changes take effect.

EFFECTIVE DATE: July 31, 1979.

FOR FURTHER INFORMATION CONTACT: Robert Phillips, Bureau of Radiological Health (HFX-460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: Section 1000.16 (21 CFR 1000.16) became effective August 1, 1974, but provided for a 5-year transition period during which reassembly of any system containing components not certified under the performance standard for diagnostic X-ray systems and their major components was permitted, as was the assembly of uncertified components into existing systems so long as no certified component was involved in the system. However, the regulation also provided that, after August 1, 1979, no uncertified components could be assembled into a system or reassembled when the reassembly was associated with a change of ownership and location.

In the Federal Register of April 17, 1979 (44 FR 22755), FDA proposed to revoke the provisions of § 1000.16 that apply to assemblies which take place after August 1, 1979, and to extend indefinitely the transitional provisions, because other contemplated or exisiting agency programs would better improve

the radiation safety performance of all diagnostic X-ray systems without reducing health care delivery.

The agency is currently reviewing the comments it received on the April 17 proposal. It will, however, be unable to complete its review in time to publish a final rule responsive to the comments before August 1, 1979. FDA is, therefore, continuing until further notice § 1000.16 (a) and (b), and suspending until further notice § 1000.16 (c) and (d).

Therefore, under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), 21 CFR Subchapter J is amended in Part 1000 by continuing § 1000.16 (a) and (b) in effect until further notice and by suspending § 1000.16 (c) and (d) until further notice.

Effective date: This amendment is effective July 31, 1979. The amendment would normally require 30 days' notice before becoming effective. However, pursuant to 5 U.S.C. 553(d)(3), FDA finds that good cause exists to make the amendment effective immediately upon publication. If the effectiveness of the amendment were delayed, burdensome requirements would be wastefully imposed on the public for the few days or weeks it will take to promulgate final regulations pursuant to the April 17, 1979, proposal.

(Sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f))

Dated: July 26, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-23842 Filed 7-27-79; 11:29 am]

BILLING CODE 4110-03-M

POSTAL SERVICE

39 CFR Part 10

International Express Mail Rates; Rates to Canada

AGENCY: Postal Service.

ACTION: Final International Express Mail Rates.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407 the Postal Service is beginning International Custom Designed Express Mail Service with Canada at rates indicated in the table below.

EFFECTIVE DATE: August 1, 1979.

FOR FURTHER INFORMATION CONTACT: Patricia M. Gibert (202) 245–5624.

SUPPLEMENTARY INFORMATION: On July 13, 1979, the Postal Service published for comment in the Federal Register proposed rates of postage for International Express Mail to Canada. 44 FR 40899. The proposal invited interested persons to submit written data, views or arguments concerning these rates. However, no comments were received.

The proposal included rates for both Custom Designed and On Demand International Express Mail Service to Canada. Only the Custom Designed Service rates are being put into effect on August 1, 1979. The rates for On Demand Service will be implemented at a later date and will be announced in the Federal Register.

Accordingly, the Postal Service adopts without change the rates of postage for International Express Mail set out in Table 8–9 for inclusion in Publication 42, International Mail, incorporated by reference, 39 CFR 10.1.

(39 U.S.C. 401, 403, 404(a)(2), 407, 410(a); Universal Postal Convention, Lausanne, 1974, T.I.A.S. No. 8231, Art. 6)

W. Allen Sanders,

Acting Deputy General Counsel.

Table 8–9.—Canada—International express mail custom designed service

Pounds (up to and including)	
1	$23.63
2	24.28
3	24.93
4	25.58
5	26.23
6	26.88
7	27.53
8	28.18
9	28.83
10	29.48
11	30.13
12	30.78
13	31.43
14	32.08
15	32.73
16	33.38
17	34.03
18	34.68
19	35.33
20	35.98
21	36.63
22	37.28
23	37.93
24	38.58
25	39.23
26	39.88
27	40.53
28	41.18
29	41.83
30	42.48
31	43.13
32	43.78
33	44.43
34	45.08
35	45.73
36	46.38
37	47.03
38	47.68
39	48.33
40	48.93
41	49.63
42	50.28
43	50.93
44	51.58

Notes: (1) Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a Designated Post Office.

(2) Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incur only one pick-up charge.

(3) If tendered at origin airport mail facility, deduct $3.00 from these rates.

[FR Doc. 79-23583 Filed 7-26-79; 2:39 pm]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL 1286-5; PP 8E2120/R217]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Ammonia

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for the pesticide chemical ammonia used as a preservative on corn used for feed. The request was submitted by the U.S. Department of Agriculture. This rule obviates the requirement for establishing a maximum permissible level for residues of ammonia on corn used for feed.

EFFECTIVE DATE: Effective on July 31, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Henry Jacoby, Product Manager 21, Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street, SW., Washington, D.C. (202/755–2562).

SUPPLEMENTARY INFORMATION: On December 5, 1978, the EPA published a notice of proposed rulemaking in the Federal Register (43 FR 56917) in response to a pesticide petition (PP 8E2120) submitted to the Agency by the U.S. Department of Agriculture, Science and Education Administration, Washington, D.C. 20250. This petition proposed that 40 CFR 180.1003 be amended by expanding the present exemption from the requirement of a tolerance for residues of ammonia on the raw agricultural commodities grapefruit, lemons, and oranges to include corn grain. Such residues would result from application of the ammonia in the "trickle ammonia process" on stored corn. Commercial bulk ammonia, commonly used in agriculture as fertilizer, would also be used for the corn preservation without further manufacture or alteration chemically. Application of ammonia to corn would be at a rate of 0.5% (dry basis) with resulting residues expected to be negligible and not of toxicological

concern. No requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

Two comments were received objecting to the petition on the grounds that the treatment of corn with ammonia changes the color of corn from yellow to brown and may possibly affect the taste of dry milled corn products and processing of dry milled corn. In addition to physical and chemical changes in the treated corn, a concern was expressed as to how ammonia-treated corn would be graded under current corn-grading standards.

Having considered the comments submitted in response to the proposed exemption from the requirement of a tolerance, the Agency concludes that the objections expressed are valid but can be resolved if the proposed use is restricted to corn grain used for feed only.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.1003 should be adopted with the restriction that the ammonia-treated corn be used for feed only, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before August 30, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708, (A-110), 401 M St., SW., Washington, D.C. 20460. Such objections should be submitted in triplicate and should specify both the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective on July 31, 1979, 40 CFR 180.1003 is amended by expanding the present exemption from requirement of a tolerance for residues of ammonia to include residues on corn grain used for feed as set forth below.

(Sec. 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).)

Dated: July 25, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

Part 180, Subpart D, Section 180.1003 is amended by adding corn grain to read as follows:

§ 180.1003 Ammonia; exemption from the requirement of a tolerance.

The fungicide ammonia is exempted from the requirement of a tolerance when used after harvest on the raw agricultural commodities grapefruit, lemons, oranges, and corn grain for feed use only.

[FR Doc. 79-23612 Filed 7-30-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

41 CFR Part 3-56

Government Property; Departmental Procurement Actions

AGENCY: Department of Health, Education, and Welfare.

ACTION: Rescission of amendment.

SUMMARY: This document rescinds a section of a final rule on changes to management approval levels regarding departmental procurement actions that appeared at page 48999 of the **Federal Register** of October 20, 1978. This Department has determined that this amendment is not necessary as the issuance of the final rule covering Part 3-56—Government Property preceded the issuance of the subject amendment and made that amendment unnecessary.

EFFECTIVE DATE: October 20, 1978.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, 202-245-6347.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-29701 appearing at page 48999 in the **Federal Register** of October 20, 1978, amendment number 15 concerning the revision of § 3-56.301(a) on page 49001 is hereby rescinded in its entirety.

Dated: July 24, 1979.

E. T. Rhodes,

Deputy Assistant Secretary for Grants and Procurement.

[FR Doc. 79-23726 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-12-M

Public Health Service

42 CFR Part 100

Limitation on Federal Participation for Capital Expenditures; Payment of Costs of Agency Review

AGENCY: Public Health Service, HEW.

ACTION: Notice of revocation of section and adoption of new method for payment of costs of agency review.

SUMMARY: This notice revokes the present rules for payment by the Secretary of costs of reviews by State designated planning agencies of proposed capital expenditures. The Department is adopting a new method for determining payments to these agencies. This new method will remain effective on an interim basis until October 1, 1979.

DATES: This section is revoked effective August 1, 1979, effective on the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Colin C. Rorrie, Jr., Ph. D., Director, Bureau of Health Planning, 3700 East-West Highway, Center Building, Room 6-22, Hyattsville, Md. 20782, 301-436-6850.

SUPPLEMENTARY INFORMATION: Section 1122 of the Social Security Act (42 U.S.C. 1320a-1) provides for a program for reviews by designated planning agencies (DPAs) in participating States of certain capital expenditures proposed by or on behalf of health care facilities to determine whether these proposals conform to applicable health plans, standards, and criteria. Subject to certain procedural requirements, the Department will not provide reimbursement under the Medicare, Medicaid, and Maternal and Child Health programs for expenses related to capital expenditures found by DPAs to be out of conformity with these plans, standards, or criteria.

All States which participate in the program of capital expenditure review under section 1122 now have State Health Planning and Development Agencies (SHPDAs) designated under section 1521 of the Public Health Service Act. Each of these SHPDAs also functions as the DPA for its State under section 1122. The functions of these agencies as DPAs are funded through their health planning and development grants under section 1525 of that Act. Thus, the funding formula in § 100.110 of the section 1122 regulations (42 CFR Part 100), which was adopted before the enactment of section 1525, is not in use.

Some of these SHPDAs will soon come to the end of the period for which

they may, under section 1521(b)(2), continue to be conditionally designated. At that time, some may not be eligible to become fully designated under section 1521(b)(3). The Secretary is aware that some States may, in those circumstances, wish to continue to control unnecessary capital expenditures through participation in the section 1122 program. Thus, the funding formula of § 100.110 might again be used.

For several reasons, the Secretary has decided that a different basis to pay States for their costs of agency reviews, other than the funding formula of § 100.110, should be adopted. The existing formula under § 100.110 has several deficiencies. The formula is complex and the data required for its use are not readily available. Also, payments made under the formula would not be a reflection of current costs because § 100.110 requires the use of agency cost data from fiscal year 1974. In addition, the § 100.110 formula is in part based on the needs of areawide health planning agencies and assumes that those agencies will share in the funds provided to DPAs. That element of the formula is no longer appropriate since health systems agencies (the present areawide health planning agencies) receive their funding to perform project reviews from another source, their health planning grants under section 1516 of the Act.

The Secretary believes that a better way to fund these costs is to pay each State an amount equivalent to the amount its SHPDA had most recently budgeted for project reviews. Because each SHPDA's current project review program, with the exception of Missouri's, consists of either the section 1122 program or a substantially similar certificate of need program, the amount a State budgets for project reviews would be a reasonable estimate of the agency's costs in performing the section 1122 reviews. For these reasons, the Secretary has decided to revoke 42 CFR 100.110 and to adopt this new basis for determining the payment to DPAs for carrying out their section 1122 reviews. This new payment method only applies to DPAs that are not designated as SHPDAs under section 1521. For SHPDAs with designation agreements under section 1521 in effect, the costs of section 1122 reviews will continue to be funded through their section 1525 grants.

Under this new payment method the Secretary will review a State's most recent SHPDA budget to determine the amount budgeted for project reviews by the agency. These amounts will include the direct expenses associated with agency review and the proportionate share of overhead costs assignable to the project review function. As provided by section 1122, the Secretary will pay this amount to the extent that he determines that these costs are reasonable.

Effective date provisions: For the reasons set forth below, the Secretary has determined that public participation in rulemaking before issuance of these rules or method and a delay in their effective date would be impractical and contrary to the public interest. On July 31, 1979, the period for which some SHPDAs may continue to be conditionally designated, will end. Some of these SHPDAs may not be eligible to become fully designated under Section 1521(b)(3). If this occurs, some of these States may wish to participate in the section 1122 program. To give States this opportunity, the Department needs to have available to States a funding mechanism to pay them for the reasonable costs of performing these reviews. Because this funding must be available by August 1, 1979, this rule must become effective immediately.

The rule adopted in this notice remains effective until October 1, 1979, unless earlier revoked by the Secretary. Congress is currently considering amendments to Title XV of the Act. Because these amendments might extend the period for which a SHPDA may continue to be conditionally designated, the States whose SHPDAs are ineligible to receive full designation might receive funds again under the section 1525 grants, in which case this rule would no longer be necessary. If no such legislative amendment is enacted, the Secretary will have the opportunity before October 1 to evaluate the adequacy of the payment mechanism established in this Notice and to decide whether a better method exists to accomplish this purpose.

The Assistant Secretary for Health, with the approval of the Secretary of Health, Education, and Welfare, revokes 42 CFR 100.110 and adopts the new method for payment of costs of DPA reviews under section 1122 of the Social Security Act, as stated in this Notice.

Dated: June 22, 1979.

Charles Miller,

Acting Assistant Secretary for Health.

Approved: June 26, 1979.

Hale Champion,

Acting Secretary.

[FR Doc. 79-20286 Filed 7-28-79; 8:45 am]

BILLING CODE 4110-83-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 5674

[Wyoming 20952]

Wyoming; Powersite Restoration No. 742; Partial Revocation of Powersite Reserve No. 5

AGENCY: Bureau of Land Management (Interior).

ACTION: Final rule.

SUMMARY: This order will partially revoke Powersite Reserve No. 5. It has been determined that these lands will not be developed for power purposes but will be restored to operation of the public land laws with the exception of one 40-acre tract which is patented.

EFFECTIVE DATE: August 29, 1979.

FOR FURTHER INFORMATION CONTACT: Evelyn Tauber—202-343-8731.

By virtue of the authority contained in section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714, and pursuant to the determination by the Federal Power Commission (now the Federal Energy Regulatory Commission) in DA-166-Wyoming, it is ordered as follows:

1. The Executive Order of July 2, 1910, creating Powersite Reserve No. 5 is hereby revoked so far as it affects the following described lands:

Sixth Principal Meridian

T. 33 N., R. 108 W.,
Sec. 2, lots 1, 2, S½N½, N½SW¼, NW¼SE¼.

The area described contains 361.57 acres in Sublette County, of which 40 acres are privately owned.

The lands are located about 7½ air miles east of Pinedale and 7½ miles north of Boulder, Wyoming. The area is steeply sloping with many large boulders scattered over the landscape, and is crossed by both Fall Creek, and Meadow Creek.

The privately owned land (NW¼SW¼) was patented subject to section 24 of the Federal Power Act of June 10, 1920, as amended, 41 Stat. 1075; 16 U.S.C. 818. As to this land, the effect of this order is to relieve the land of the limitation prescribed by the said section 24.

2. The State of Wyoming declined to exercise its preference right of application for highway rights-of-way or material sites as provided by section 24 of the Federal Power Act of June 10, 1920, supra, when notified of the proposed restoration of the land from powersite withdrawal.

3. At 10 a.m. on August 29, 1979, the public lands shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 29, 1979, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The public lands in this order have been and continue to be open to applications and offers under the mineral leasing laws, and to location under the United States mining laws subject to the provisions of the Act of August 11, 1955, 69 Stat. 681, 30 U.S.C. 621.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Cheyenne, Wyoming 82001.

Guy R. Martin,

Assistant Secretary of the Interior.

July 23, 1979.

[FR Doc. 79-23576 Filed 7-30-79; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FI-5203]

Final Flood Elevation Determination for the Unincorporated Areas of Douglas County, Ga., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the unincorporated areas of Douglas County, Georgia.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the unincorporated areas of Douglas County, Georgia.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the unincorporated areas of Douglas County, Georgia, are available for review at the Douglas County Planning Department, Douglas County Courthouse, 6754 Broad Street, Douglasville, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the unincorporated areas of Douglas County, Georgia.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67.4(a)). An opportunity for the community or individuals to appeal this determintion to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Chattahoochee River	Approximately 130 feet upstream of Capps Ferry Road.	730
	West Chapel Hill Road extended.	742
	Just upstream of State Highway 92.	747
	Approximately 400 feet upstream of Fairburn Road.	753
Sweetwater Creek	Approximately 200 feet upstream of Factory Shoals Road.	863
	Approximately 100 feet downstream of Blairs Bridge (New) Road.	877
	Approximately 200 feet downstream of State Highway 6.	884
Sweetwater Creek Tributary 1.	Just downstream of Skyview Drive.	887
	Just downstream of Magnolia Drive.	900
Gordon Creek	Just upstream of Skyview Drive.	882
	Douglas County boundary	897
Pine Creek	Douglas County boundary	888
Anneewakee Creek	Approximately 50 feet upstream of Anneewakee Road.	861
	Just upstream of Bomar Road.	883
	Just downstream of Chapel Hill Road.	897
Little Anneewakee Creek.	Approximatley 2,000 feet upstream of confluence with Anneewakee Creek.	898
	Approximately 100 feet upstream of Slater Mill Road extended.	940
Gothards Creek	At confluence of Tributary 2	929
	Approximately 50 feet downstream of Walton Store Road.	935
	Approximately 30 feet downstream of North Flatrock Road.	939
	Approximately 40 feet upstream of North Flatrock Road.	945
Tributary 2	Approximately 30 feet upstream of Cave Springs Road.	941
Tributary 3	Approximately 200 feet upstrem of confluence with Gothards Creek.	939
Tributary 4	Just upstream of Dorris Road	961
Mud Creek	Just upstream of High Point Road.	945
	Approximately 150 feet upstream of Brittain Road.	954
	Approximately 120 feet upstream of Ragan Road.	972
Waterfall Branch	Just downstream of Cedar Mountain Road.	970
Town Branch	Approximately 70 feet upstream of Brewer Road.	979
	Approximately 80 feet downstream of Lake Val-Do-Mar Dam.	1,000
	Just upstream of Lake Val-Do-Mar Dam.	1,026
Mobley Creek	Just upstream of Banks Mill Road.	907
	Approximately 150 feet downstream of Berea Road.	939
	Just upstream of Pool Road	949
	Approximately 150 feet downtream of Mason Creek Road.	973
Tributary 5	Approximately 30 feet upstream Pool Mill Road.	918
Tributary 6	Just downstream of Daniel Mill Road.	959
Tributary 7	Approximately 400 feet upstream of Mason Creek Road.	977

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: July 17, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-23332 Filed 7-30-79; 8:45 am]

BILLING CODE 4210-23-M

44 CFR Part 67

[Docket No. FI-4919]

Final Flood Elevation Determination for the City of LeRoy, McLennan County, Tex., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of LeRoy, McLennan County, Texas.

These base (100-year) flood elevations are the basis of the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of LeRoy, McLennan County, Texas.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of McLennan County, Texas, are available for review at the City Secretary's Office, P.O. Box 86, LeRoy, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of LeRoy, McLennan County, Texas.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Rice Creek	Southernmost corporate limits.	459
	At private road approximately 600 feet upstream of the southernmost corporate limits.	460

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 22, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-23333 Filed 7-30-79; 8:45 am]

BILLING CODE 4210-23-M

44 CFR Part 67

[Docket No. FEMA 5668]

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii, call Toll Free Line (800) 424–9080), Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determination of flood elevation for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

The final base (100-year) flood elevations for selected locations are:

Final Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Illinois	(v) of Lindenhurst, Lake County (Docket No. FI-5208).	Hastings Creek	Northern corporate limits	*758
			Western corporate limits	*763
Maps available at The Village Hall (Engineer's Office), Lindenhurst, Illinois.				
Illinois	(v) Of Round Lake Heights, Lake County (Docket No. FI-5210).	Round Lake	Downstream corporate limits at Rollins Road	*770
		Drain Tributary	Upstream corporate limits	*770
Maps available at Clerks Office, Village Hall, 629 Pontiac Court, Round Lake Heights, Illinois.				
Illinois	South Beloit, City, Winnebago County (Docket No. FI-5462).	Rock River	Upstream corporate limits (State line)	*737
			Confluence of Turtle Creek	*737
			Downstream corporate limits	*734
		Turtle Creek	Upstream corporate limits (State line)	*750
			Park Avenue (Upstream)	*749
			Wheeler Avenue (Upstream)	*746
			Blackhawk Boulevard (Upstream)	*744
			Chicago and Northwestern R.R. (Upstream)	*744
			Chicago, Milwaukee, St. Paul and Pacific Railroad (Upstream)	*740
			Confluence with Rock River	*737
Maps available at 519 Blackhawk Boulevard, South Beloit, Illinois.				
Indiana	New Chicago, Town, Lake County (Docket No. FI-4976).	Deep River	Grand Boulevard	*589
			Michigan Street Bridge	*586
Maps available at the Town Hall, New Chicago, Indiana.				
Kansas	(c) of Baldwin, Douglas County (Docket No. FI-5206).	East Fork Tauy Creek	About 200 feet upstream of corporate limits	*1,006
			About 100 feet downstream of High Street	*1,009
			About 65 feet upstream of High Street	*1,014
			About 80 feet upstream of Elm Street	*1,017
			Upstream corporate limits	*1,021
		Tributary A	About 80 feet upstream of mouth at East Fork Tauy Creek Tributary	*1,022
			Just upstream of Third Street	*1,026
			About 40 feet upstream of Fremont Street	*1,028
			Just upstream of Second Street	*1,034
			About 300 feet upstream of Elm Street	*1,035
			Just upstream of Dearborn Street	*1,040
			Upstream corporate limits	*1,042
		Tributary B	About 100 feet upstream of mouth at East Fork Tauy Creek Tributary	*1,001
			About 400 feet upstream of mouth at East Fork Tauy Creek Tributary	*1,009
			1,130 feet upstream of mouth at East Fork Tauy Creek Tributary	*1,019
		Tributary C	Mouth at East Fork Tauy Creek Tributary	*1,005
			About 340 feet upstream of East Fork Tauy Creek Tributary	*1,005
			Just downstream of Third Street	*1,019
			Just upstream of Third Street	*1,026
			Just downstream of High Street	*1,030
			40 feet upstream of High Street	*1,035
			460 feet upstream of High Street	*1,035
		East Fork Tauy Creek Tributary	About 120 feet upstream of corporate limits	*995
			Just upstream of Sixth Street	*999
			Just downstream of High Street	*1,013
			Just upstream of High Street	*1,021

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of Elm Street	*1,027
			Just upstream of Freemont Street	*1,024
			Just downstream of Dearborn Street	*1,032
			Upstream side of Dearborn Street	*1,037
			Just upstream of Chapel Street	*1,042
			About 300 feet upstream of Chapel Street	*1,042
	Maps available at City Hall, 801 High Street, Baldwin City, Kansas.			
Maryland	Keedysville, Town Washington County (Docket No. FI-5210).	Little Antietam Creek	Chessie System	*374
			South Main Street (Upstream Side)	*372
			Coffman Road	*384
	Maps available at the Town Hall, Keedysville, Maryland			
Maryland	Sharpsburg, Town Washington County (Docket No. FI-5211).	Tributary No. 105 to Antietam Creek.	Downstream Corporate Limits	*401
			Antietam Street	*400
			10th Alley (Upstream Crossing)	*400
	Maps available at the Town Hall, Sharpsburg, Maryland.			
Minnesota	(c) of Hallock, Kittson County (Docket No. FI-5213).	Two Rivers	Downstream corporate limit	*811
			Minnesota Highway 175	*812
			Corporate limit—confluence with South Branch Two Rivers	*813
		South Branch Two Rivers	Downstream corporate limit	*813
			Upstream corporate limit	*815
	Maps available at Hallock City Hall, P.O. Box 346, Hallock, Minnesota.			
Minnesota	Roseau, Roseau County (Docket No. FI-5214).	Roseau River	Just upstream County Road 115	*1,035
			Just downstream of State Highway 89	*1,037
			Just upstream of County Highway 28	*1,042
			2.5 miles upstream of County Highway 28	*1,045
			Downstream City of Roseau corporate limit	*1,049
			Upstream City of Roseau corporate limit	*1,050
			Just downstream of County Highway 124	*1,052
		Hay Creek	Confluence with Roseau River	*1,042
			3,000 feet downstream of County Highway 28	*1,043
		Southfork Roseau River	Just upstream of County Road 128	*1,093
			0.5 miles downstream of State Highway 89	*1,099
			Just upstream of State Highway 89	*1,101
			Just downstream County Highway 4	*1,104
		Warroad River	Mouth at Lake of the Woods	*1,064
			4.3 miles upstream of mouth of Lake of the Woods	*1,068
		Pine Creek	Just upstream of County Road 118	*1,041
			1.7 miles upstream of County road 118	*1,047
	Maps available at Roseau County Court House, Roseau, Minnesota.			
New Jersey	Essex Falls, Borough, Essex County (Docket No. FI-5219).	Pine Brook	Downstream Corporate Limits	*245
			Runnymede Road	*300
			Upstream Corporate Limits	*300
	Maps available at 255 Roseland Avenue, Essex Falls, New Jersey.			
New Jersey	Runnemede, Borough, Camden County (Docket No. FI-5221).	Atlantic Ocean	Inundating Big Timber Creek	*10
	Maps available at the Office of the Borough Clerk, Runnemede, New Jersey.			
New York	Watervliet, City, Albany County (Docket No. FI-5234).	Hudson River	Downstream Corporate Limits	*25
			Coupress Bridge	*27
			Upstream Corporate Limits	*27

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available at the office of the City Clerk, City Hall, Broadway and 15th Street, Watervliet, New York.				
New York	White Plains, City, Westchester County (Docket No. FI-5151).	Bronx River	Conrail	*179
			Hamilton Avenue	*186
			Cemetery Road	*189
			Upstream Corporate Limits	*196
Maps available at the White Plains Planning Department, Municipal Building Annex, White Plains, New York.				
Ohio	(c) of Ashland, Ashland county (Docket No. FI-5076).	Town Run Creek	Downstream corporate limits	*994
			Just upstream from Lee Avenue	*1,005
			230 feet downstream of Holbrook Avenue	*1,017
			Just upstream of Holbrook Avenue	*1,025
			Just downstream of East Main Street	*1,036
			Just upstream of Arthur Street	*1,052
			Just Downstream of Center Street	*1,052
			Just upstream of Center Street	*1,058
			Just downstream of Clairmount Avenue	*1,064
			Just upstream of Clairmount Avenue	*1,069
			Just downstream of West Main Street	*1,073
			Just upstream of Race Street	*1,080
			Just upstream of Lindale Avenue	*1,090
			Just upstream of Parkside Drive	*1,112
			Just downstream of Brookside Golf Course entrance	*1,137
			Just upstream of Brookside Golf Course entrance	*1,145
		Lang Creek	downstream corporate limit	*963
			Just upstream of Cleveland Avenue	*985
			Upstream corporate limits	*991
		Jamison Creek	Downstream corporate limits	*1,015
			Just downstream of Center Street	*1,050
			1,000 feet upstream from Center Street	*1,065
			Upstream corporate limits	*1,082
Maps available at Mayor's Office, 206 Claremont Avenue, Ashland, Ohio.				
Ohio	Wickliffe, Lake County (Docket No. FI-5225).	Deer Creek	Downstream corporate limits	*697
			About 650 feet downstream of Rockefeller Road	*724
			Just downstream of Rockefeller Road	*734
			Just upstream of Rockefeller Road	*744
			About 50 feet upstream of Buena Vista Drive	*744
Maps available at City Hall, 28730 Ridge Road, Wickliffe, Ohio.				
Pennsylvania	Colebrook, Township, Clinton County (Docket No. FI-5227).	West Branch Susquehanna River.	Downstream Corporate Limits	*578
			Upstream Corporate Limits	*584
		Lick Run	At confluence with West Branch Susquehanna River	*582
			320 feet downstream from Legislative Route 18011 Bridge to Hazard Road.	*647
		Whiskey Run	At confluence with Lick Run (Upstream Side)	*584
			Legislative Route 18011 Bridge	*594
			Approximately 1,200 feet upstream of Legislative Route 18011	*643
Maps available at the residence of Ms. Pauline Simcox, Farrandsville, Pennsylvania				
Pennsylvania	Ridley Park, Borough, Delaware County (Docket No. FI-5229).	Little Crum Creek	I-95	
			Glenloch Road	*13
				*45
			Upstream Corporate Limits	*49
		Stony Creek	Chester Pike (U.S. Route 13)	*26
			Hinckley Avenue	*49
			Crosswell Street	*65

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available at the Borough Office, Ward and Cresswell Streets, Ridley Park, Pennsylvania.				
Pennsylvania	Watsontown, Borough, Northumberland County (Docket No. FI-4855).	West Branch Susquehanna River.	Downstream Corporate Limits	*476
			Brimmer Street	*477
			Upstream Corporate Limits	*479
		Spring Run	Confluence of West Branch Susquehanna River	*479
			Main Street	*479
			ConRail Bridge (Downstream Side)	*487
			ConRail Bridge (Upstream Side)	*487
			Railroad Culvert (Downstream)	*487
			Railroad Culvert (Upstream)	*494
			Liberty Street	*497
			Upstream Corporate Limits	*499
Maps available at the Borough Building, Watsontown, Pennsylvania.				
West Virginia	Bath, Town, Morgan County (Docket No. FI-5193).	Warm Springs Run	Confluence of Berkeley Road Run	*592
			Chessie System Bridge (upstream)	*598
			Independence Street (upstream)	*608
			Fairfax Street Bridge (upstream)	*614
			Thomas Street Upstream	*620
			Broadway Avenue (upstream)	*626
			John Stret (upstream)	*631
			Myers Street (downstream)	*636
		Yellow Spring Run	Washington Street (upstream)	*622
			Green Street (downstream)	*633
			Upstream Corporate Limits	*646
		Davis Road Run	Confluence with Warm Springs Run	*606
			Upstream Corporate Limits	*632
Maps are available at 304 Warren Street, Bath, West Virginia.				
West Virginia	Mason County (Docket No. FI-5195).	Ohio River	Upstream Gallipolis Dam	*565
			Confluence of Kanawha River	*570
			U.S. Route 33	*577
			Racine Dam	*584
		Arbuckle Creek	ConRail	*572
			One mile upstream of ConRail	*579
			1.5 miles upstream of ConRail	*592
			1.8 miles upstream of ConRail	*603
		Kanawha River	Confluence with Ohio River	*570
			5 miles upstream of confluence with Ohio River	*570
			15 miles upstream of confluence with Ohio River	*571
		Eighteenmile Creek	Chessie System	*562
			County Route 41	*563
			County Routes 39 and 6	*565
		Crab Creek	ConRail	*567
			3 miles upstream of ConRail	*567
			5 miles upstream of ConRail	*570
			5.5 miles upstream of ConRail	*578
			6 miles upstream of ConRail	*589
			7.7 miles upstream of ConRail	*611
Maps available at the Mason County Courthouse, Point Pleasant, West Virginia.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: July 10, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-23330 Filed 7-30-79; 8:45am]

BILLING CODE 4210-23-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1389]

Transkentucky Transportation Railroad, Inc. Authorized to Operate Over Tracks Abandoned by Louisville and Nashville Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1389.

SUMMARY: Service Order No. 1389 authorizes the Transkentucky Transportation Railroad, Inc., to operate over abandoned tracks of the Louisville and Nashville Railroad Company, between Maysville, Kentucky, and Paris, Kentucky.

EFFECTIVE DATE: 12:01 a.m., August 16, 1979, and continuing in effect until further order of this Commission.

FOR FURTHER INFORMATION CONTACT:

J. Kenneth Carter (202) 275–7840.

SUPPLEMENTARY INFORMATION:

Transkentucky Transportation Railroad, Inc. Authorized to Operate Over Tracks Abandoned by Louisville and Nashville Railroad Company

Decided: July 24, 1979.

The Louisville and Nashville Railroad Company (L&N) has been authorized by the Commission, in Docket AB2 (Sub-No. 14), to abandon its line between Maysville, Kentucky, and Paris, Kentucky, a distance of approximately 49.6 miles. The Transkentucky Transportation Railroad, Inc. (TTI) has made an offer to purchase this line which the L&N will cease operating at the close of business on August 15, 1979. The L&N has consented to use of its line between Maysville, Kentucky and Paris, Kentucky, by the TTI pending completion of its sale.

Operation of this line by TTI will permit a continuation of freight service between Maysville, Kentucky, and Paris, Kentucky, and will provide a route between the Louisville and Nashville Railroad Company and the Chesapeake and Ohio Railway Company.

It is the opinion of the Commission that an emergency exists; that operation by TTI over these tracks abandoned by L&N is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1389 Transkentucky Transportation Railroad, Inc. Authorized to Operate Over Tracks Abandoned by the Louisville and Nashville Railroad Company.

(a) The Transkentucky Transportation Railroad, Inc. is authorized to operate over tracks abandoned by Louisville and Nashville Railroad Company between Maysville, Kentucky and Paris, Kentucky, a distance of approximately 49.6 miles, pending disposition of an application of TTI seeking permanent authority to operate this line.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(c) Nothing herein shall be considered as a prejudgement of the application of TTI seeking authority to operate over these tracks.

(d) *Rates applicable.* Since this operation by TTI over tracks previously operated by L&N is deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed, to, from, or via these lines which were formerly in effect on such traffic when routed via L&N, until tariffs naming rates and routes specifically applicable via TTI become effective.

(e) In transporting traffic over these lines, TTI and all other common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission is accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 12:01 a.m., August 16, 1979.

(g) *Expiration date.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

(49 U.S.C. (10304–10305 and 11121–11126).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-23373 Filed 7-30-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

Groundfish of the Gulf of Alaska; Apportionment of Reserve Amounts

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Apportionment of Reserve Amounts, Final Regulations.

SUMMARY: These regulations make additional amounts of fish available to foreign fishing in accordance with the provisions of the Groundfish of the Gulf of Alaska Fishery Management Plan (FMP) and the regulations implementing this FMP (see 50 CFR 672.20(c) (43 FR 56238) and 50 CFR 611.92(b)(1)(ii) (43 FR 59322)). These regulations apply to vessels of foreign nations fishing for groundfish in the Gulf of Alaska.

EFFECTIVE DATE: July 24, 1979.

FUR FURTHER INFORMATION CONTACT: Harry L. Rietze, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, Telephone: (907) 586–7221.

SUPPLEMENTARY INFORMATION:

I. Background

Because of uncertainties about specifications of U.S. capacity, particularly the extent to which U.S. vessels delivering to foreign processors at sea (joint ventures) would harvest

groundfish, the FMP established a reserve of fish which could be released and added to the total allowable level of foreign fishing (TALFF) if U.S. vessels did not harvest at anticipated levels.

On August 23, 1978, the Council adopted an amendment to the FMP for groundfish which increased the reserve of pollock to 133,800 metric tons and increased reserves of species taken incidental to pollock. The purpose of these reserves was to assure that an adequate supply of fish was available to U.S. vessels wishing to sell U.S.-caught fish to foreign processing vessels at sea. The amendment was approved by the Assistant Administrator for Fisheries on September 22, 1978 (43 FR 46349).

Final regulations published on December 1, 1978 (43 FR 56238), established criteria and timing of any reserve release. The final regulations also established a procedure for public comment on the extent to which vessels of the United States would harvest reserve amounts during the remainder of the fishing year.

These regulations provide that up to 25 percent of the initial reserve amounts will be released and added to TALFF as soon as practicable after January 2, March 2, May 2, and July 2 if it is determined that U.S. fishermen will not catch these amounts during the remainder of the fishing year.

In January, 25 percent of the reserves of each species except sablefish was released. In March, 25 percent of the reserves of sablefish, but no other species, was released. In May, 25 percent of the reserves of each species except sablefish was released. Accordingly, 50 percent of the initial reserves of all species except sablefish are eligible for the July release; of the sablefish reserves, 75 percent in all fishing area except Southeast and 100 percent in Southeast are eligible for release.

The July release will be made in two stages, the first with the effective date of this public notice and the second on August 15, 1979, or as soon as practicable thereafter. The first stage will involve the release of some or all reserves in certain fishing areas. The second stage will involve the release of any amounts the Regional Director determines will not be harvested by U.S. fishermen through the end of the fishing year.

II. Determination of Amount of Reserve Release

In accordance with the requirements of 50 CFR 672.20(c) and 50 CFR 611.92(b)(1)(ii), the Regional Director has determined that:

1. Under the first stage of the July release, the following amounts (metric tons) of reserves of each species in each fishing area in the Gulf of Alaska will be retained for U.S. fishermen:

	Shumagin	Chirikof	Kodiak	Yakutat	Southeast
Pollock	50	7,000	10,000	1,000	0
Pacific cod	1,364	574	600	150	0
Flounder	50	50	50	100	0
Pacific ocean perch	450	450	800	625	0
Rockfish	25	25	75	200	0
Sablefish	185	230	675	110	700
Atka mackerel	50	300	400	10	0
Squid	5	10	10	10	0
Other species	100	100	100	30	0

In making this determination, the Regional Director considered to what extent U.S. vessels would harvest the remaining reserves. The Regional Director has concluded that U.S. vessels would take only those amounts shown in the above table. Hence, it is appropriate that the balances be transferred to the TALFF.

2. The remaining amounts (metric tons) of reserves of all species in the Gulf of Alaska will be released and added to the TALFF as follows:

	Shumagin	Chirikof	Kodiak	Yakutat	Southeast
Pollock	22,550	14,550	6,200	3,950	1,600
Pacific cod	0	0	1,610	484	214
Flounder	1,450	350	1,700	800	300
Pacific ocean perch	0	0	0	625	1,000
Rockfish	25	25	75	600	700
Sablefish	340	220	0	790	0
Atka mackerel	450	100	1,350	90	0
Squid	95	90	90	90	100
Other species	550	400	650	270	150

During the public comment period, no testimony was received that substantiated future expansion of the U.S. fishing fleet or U.S. processing intent beyond that stated in the FMP. Therefore, except for sablefish, current domestic annual harvests (DAH) are sufficient to provide for U.S. catches

that appear likely to be delivered to U.S. processors and need not be supplemented.

The Regional Director has reviewed U.S. harvesting capacity and U.S. processing capacity and intent and has determined that substantial sablefish reserves will be utilized by U.S. industry. Projections made by the U.S. processing industry indicate the sablefish DAH may be exceeded. Accordingly, sufficient sablefish reserves will be retained to support both joint ventures and U.S. processors.

The other reserves remaining after this release are sufficient to provide for joint ventures. Four permits have been issued to foreign processing vessels for joint ventures; as many as 12 U.S. fishing vessels reportedly plan to commence delivering fish to foreign processing vessels in the near future.

III. Response to Public Comments

Ten comments were received during the comment period, two of which favored releasing certain reserves and eight of which favored retaining certain reserves. They are summarized and responded to below:

Comment: All of the available reserves of sablefish, Pacific cod, other rockfish, and "other species" should be released to TALFF to support foreign longline fishing operations for sablefish and Pacific cod.

Response: No sablefish reserves will be released to TALFF in Kodiak or Southeast as they are intended to be utilized by U.S. fishermen fishing for joint ventures and/or U.S. processors. No Pacific ocean perch will be released in the Shumagin, Chirikof, or Kodiak areas; no Pacific cod will be released in the Shumagin or Chirikof areas. These species are intended for joint ventures. Amounts of other fish being released are those the Regional Director has determined will not be needed by U.S. fishermen.

Comment: The entire amount remaining in the reserves should be released to TALFF.

Response: For reasons stated in the above response, only certain amounts of reserves will be released to TALFF.

Comment: Joint ventures will harvest all the Pacific ocean perch and Pacific cod in the Shumagin and Chirikof areas and some of both species in the Kodiak area. Joint ventures will take substantial amounts of pollock and incidental species throughout the Gulf of Alaska. To support joint ventures, therefore, reserves of Pacific ocean perch and Pacific cod in the Shumagin and Chirikof areas, certain amounts of pollock throughout the Gulf of Alaska, and sufficient amount of incidental species should be retained for joint ventures.

Response: As shown in the above table, amounts of Pacific ocean perch, Pacific cod, pollock, and sufficient incidental species are being retained to support joint ventures. During the second stage of this reserve release, any of these amounts the Regional Director determines will not be taken by the end of the fishing year will be released to TALFF.

IV. Other Matters

An environmental impact statement was prepared for the FMP for the Groundfish of the Gulf of Alaska and is on file with the Environmental Protection Agency (EPA). A negative assessment of environmental impact prepared for the reserve release provisions of the groundfish FMP is also on file with the EPA.

The Regional Director has determined that these regulations should be effective immediately for the following reasons:

A. The regulations implementing the FMP provide adequate advance notice and invite public comment on this action;

B. No regulatory restrictions are imposed on any person as a result of this action;

C. This action relates to the extension of a benefit; and

D. Immediate implementation is required to achieve full utilization of the fishery resources concerned. This action is not significant in relation to criteria prescribed by EO 12044, and a regulatory analysis is not required.

Signed at Washington, D.C. this 24th day of July 1979.

Winfred H. Meibohm,

Executive Director,

National Marine Fisheries Service.

(16 U.S.C. 1801, et seq.)

PART 611—FOREIGN FISHING

(1) 50 CFR 611.20 is amended by revising Table I of paragraph (c) as follows: Change all entries under Gulf of Alaska Groundfish to read:

§ 611.20 Total allowable level of foreign fishing.

* * * * *

(c) * * *

TABLE I

[As amended by July 1979 reserve release]

Fishery	Species	Species code	TALFF (metric tons)
Gulf of Alaska groundfish	Cod, Pacific	702	[1] 16,612
Do	Flounders, including yellowfin sole	129	[1] 26,050
Do	Mackerel, Atka	207	[1] 24,040
Do	Perch, Pacific Ocean (POP)	780	[1] 21,575
Do	Pollock	701	[1] 136,550
Do	Rockfishes, other than POP	849	[1] 5,275
Do	Sablefish	703	[1] 7,100
Do	Squid	509	[1] 1,965
Do	Other species	499	[1] 15,370

(2) 50 CFR 611.92 is amended by revising Table I—Gulf of Alaska Groundfish Fishery for 1978/1979 of paragraph (b) as follows:

§ 611.92 Gulf of Alaska trawl fishery.

* * * * * * *

(b) * * *

(l) * * *

(i) * * *

TABLE I.—*Gulf of Alaska Groundfish Fishery: TALFF and Reserve;* [1] by Species and Fishing Area for 1978/1979, in metric tons

[As amended by July 1979 reserve release]

Species		Fishing areas [2]					Total
		Shumagin	Chirikof	Kodiak	Yakutat	Southeast	
Pollock	TALFF	52,150	42,800	27,400	10,400	3,800	136,550
	Reserve	50	7,000	10,000	1,000	0	18,050
Pacific Cod [3]	TALFF	3,936	1,726	7,900	2,250	800	16,612
	Reserve	1,364	574	600	150	0	2,688
Flounders	TALFF	8,150	2,050	9,350	4,900	1,600	26,050
	Reserve	50	50	50	100	0	250
Pacific Ocean perch (POP)	TALFF	2,150	2,150	4,200	6,875	6,200	21,575
	Reserve	450	450	800	625	0	2,325
Other rockfishes [4]	TALFF	175	175	325	2,300	2,300	5,275
	Reserve	25	25	75	200	0	325
Sablefish	TALFF	1,815	1,170	1,625	2,490	0	7,100
	Reserve	185	230	675	110	700	1,900
Atka Mackerel	TALFF	4,350	3,300	15,400	990	0	24,040
	Reserve	50	300	400	10	0	760
Squid	TALFF	395	390	390	390	400	1,965
	Reserve	5	10	10	10	0	35
Other Species [5]	TALFF	4,200	3,400	4,700	1,970	1,100	15,370
	Reserve	100	100	100	30	0	330

[1] The TALFFs specified in this table may be modified during the year if reserves are apportioned to TALFF.
[2] See Figure 3 of Appendix II to Section 611.9 for description of fishing areas.
[3] Of the total Pacific cod TALFF, only 5,662 metric tons may be caught west of 157° W. longitude.
[4] The category "other rockfishes" includes all rockfishes other than Pacific ocean perch.

PART 672—GROUNDFISH OF THE GULF OF ALASKA

(3) 50 CFR 672.20 is amended by revising Table I—Optimum Yield and Reserves of paragraph (a) as follows:

§ 672.20 General limitations.

(a) * * *

Table I.—*Optimum Yield and Reserves, in Metric Tons*

[As amended by July 1979 reserve release]

Species		Fishing areas					Total
		Shumagin	Chirikof	Kodiak	Yakutat	Southeast	
Pollock	OY	57,000	54,400	40,800	12,500	4,100	168,800
	Reserve	50	7,000	10,000	1,000	0	18,050
Pacific Cod	OY	9,600	4,100	15,300	4,300	1,500	34,800
	Reserve	1,364	574	600	150	0	2,688
Flounder	OY	10,400	2,700	12,000	6,400	2,000	33,500
	Reserve	50	50	50	100	0	250
Pacific Ocean Perch (POP)	OY	2,700	2,700	5,200	7,900	6,500	25,000
	Reserve	450	450	800	625	0	2,325
Other Rockfish	OY	300	200	600	3,400	3,100	7,600
	Reserve	25	25	75	200	0	325
Sablefish	OY	2,100	1,400	2,400	3,400	3,700	13,000
	Reserve	185	230	675	110	700	1,900
Atka Mackerel	OY	4,400	3,600	15,800	1,000	0	24,800
	Reserve	50	300	400	10	0	760
Squid	OY	400	400	400	400	400	2,000
	Reserve	5	10	10	10	0	35
Other Species*	OY	4,400	3,600	5,000	2,100	1,100	16,200
	Reserve	100	100	100	30	0	330

*Includes all stocks of finfish except: (1) those listed above; and (2) salmon, steelhead trout, Pacific halibut, and fish of the genus *Coryphaenoides*.

*The category "other species" includes all species of fish except (A) the other fish listed in the table; and (B) shrimp, scallops, salmon, steelhead trout, Pacific halibut, herring, fish of the genus *Coryphaenoides*, and Continental Self fishery resources.

[FR Doc. 79-23357 Filed 7-30-79; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 44, No. 148
Tuesday, July 31, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

MERIT SYSTEMS PROTECTION BOARD

[5 CFR Part 432]

Federal Employees; Reduction in Grade and Removal Based on Unacceptable Performance; Request for Comments on Regulation Review

AGENCY: Merit Systems Protection Board.

ACTION: Request for Comments on Regulation Review.

SUMMARY: The American Federation of Government Employees, representing Thomas W. Wells and others, have petitioned the Merit Systems Protection Board to undertake a review of certain regulations published by the Office of Personnel Management (to be codified at 5 CFR § 432.206) to determine whether as adopted, or as implemented by the Social Security Administration of the Department of Health, Education, and Welfare, they had required or would require the commission of a prohibited personnel practice.

DATE: The Board invites public comments on any aspect of this proceeding. To be considered, comments must be received in the Office of the Secretary at the address below on or before August 24, 1979. Oral arguments: September 20, 1979; 2:30 p.m.

ADDRESS: The petition and other papers relating to this action are available for public inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, (Federal holidays excepted) at the Merit Systems Protection Board, Office of the Secretary, 1717 H Street, NW., Room 220, Washington, D.C. 20419. Hearing location: 717 Madison Place, NW., Room 404, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Donald Cox, Deputy General Counsel on 202–653–7165.

SUPPLEMENTARY INFORMATION: The petitioners in this matter specifically asserted that this regulation on its face, or as implemented, would cause a violation of 5 U.S.C. § 2302(b)(11). This section prohibits a Federal employee from taking or failing to take any personnel action:

> * * * if the taking of or failure to take such action violates any law, rule or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

The Board granted this petition on July 25.

Oral arguments on the matter are scheduled to take place before the Board on September 20, 1979 at 2:30 p.m. in Room 404, 717 Madison Place, NW., Washington, D.C. The hearings will be open to the public.

By order of the Board.

Ruth T. Prokop,

Chairwoman.

[FR Doc. 79-23569 Filed 7-30-79; 8:45 am]

BILLING CODE 6325-20-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Part 226]

Child Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Extension of Comment Period.

SUMMARY: This notice extends the period for comments on the proposed Child Care Food Program regulations, published July 3, 1979 (44 FR 39076). Because of the complexity of the proposed regulations and the amount of time required to hold meetings with the interested public in each of the agency's seven regions, Robert M. Greenstein, Administrator of the Food and Nutrition Service, has decided to extend the comment period to 60 days. The proposed rule indicated that the comment period would be limited to 45 days, ending on August 17. The comment period is hereby extended to September 1, 1979, by which date comments must be received to be assured of consideration in final rulemaking.

DATE: The comment period is extended to September 1, 1979.

ADDRESS: Send written comments to Jordan Benderly, Director, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Jordan Benderly (202) 447–6509.

Dated: July 27, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-23770 Filed 7-30-79; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

[7 CFR Parts 401, 426]

Proposed Combined Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The proposed rule prescribes procedures for insuring certain combined crops effective with the 1980 crop year. This rule combines provisions from previous regulations for insuring combined crops in a shorter, clearer, and more simplified document which will make the program more effective administratively. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions must be submitted not later than October 1, 1979, to be assured of consideration.

ADDRESS: Written comments on this proposed rule should be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, 202–447–3325.

SUPPLEMENTARY INFORMATION: Under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), it is proposed that there be established a new Part 426 of Chapter IV in Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 426, Combined Crop Insurance.

This part prescribes procedures for insuring combined crops effective with the 1980 crop year.

All previous regulations applicable to insuring combined crops as found in 7 CFR 401.101–401.111, and 401.144, will not be applicable to 1980 and succeeding combined crops but will remain in effect for Federal Crop Insurance Corporation (FCIC) combined crop insurance policies issued for the crop years prior to 1980.

It has been determined that combining all previous regulations for insuring combined crops into one shortened, simplified, and clearer regulation would be more effective administratively.

The Federal Crop Insurance Corporation has determined that there will be no new applications accepted for combined crop insurance under the provisions of the proposed 7 CFR Part 426, starting with the 1980 crop year. The program will be continued for those producers with continuous combined crop insurance policies.

The combined crop insurance program, begun in the 1969 crop year, was, at one time, offered in a majority of counties throughout the country as a means of insuring a variety of crops at a reduced premium rate. Over the years, participation in the program has dwindled to seven counties in North Dakota. Several of these counties presently have low participation in the combined crop program, with the majority of producers preferring individual crop coverage.

The determination to discontinue accepting new applications for combined crop insurance, while affecting only new policyholders, will afford those new policyholders a greater flexibility in insurance coverage by allowing them to select varying levels of coverage on individual crops to reduce premium costs. The same benefits will accure to the current combined crop policyholder who determines that individual crop coverage would be more beneficial, and any insuring experience the producer earned under the combined crop insurance program will be transferred to an individual crop program if the producer decides not to continue with the combined crop program.

It should be reemphasized that the Federal Crop Insurance Corporation intends to maintain the combined crop insurance program under the provisions of the proposed 7 CFR Part 426 for those producers who wish to continue to insure their crops under their continuous combined crop insurance contract.

The proposed 7 CFR Part 428 provides (1) for a Premium Adjustment Table which replaces the current premium discount provisions and includes a maximum 50 percent reduction for good insurance experience, as well as premium increases for unfavorable experience, on an individual contract basis, (2) that production guarantees will now be shown on a harvested basis with a reduction for any unharvested acreage, (3) that any premium not paid by the termination date will be increased by a 9 percent service fee with a 9 percent simple interest charge applying to any unpaid balances at the end of each subsequent 12-month period thereafter, (4) that the time period for submitting a notice of loss be extended from 15 days to 30 days, (5) that the 60-day time period for filing a claim be eliminated, (6) that three coverage level options be offered in each county, (7) that the Acturarial Table shall provide the level which will be applicable to a contract unless a different level is selected by the insured and the conversion level will be the one closest to the present percent level offered in each county, and (8) for an increase in the limitation from $5,000 to $20,000 in those cases involving good faith reliance on misrepresentation, as found in 7 CFR Part 426.5 of these proposed regulations, wherein the Manager of the Corporation is authorized to take action to grant relief.

The proposed Combined Crop Insurance regulations provide a December 31 cancellation date for all combined corp insurance counties. These regulations, and any amendments thereto, must be placed on file in the Corporation's office for the county in which the insurance is available not later than 15 days prior to the cancellation date, in order to afford farmers an opportunity to examine them before the cancellation date of December 31, 1979, before they become effective for the 1980 crop year.

All written submissions made pursuant to this notice will be available for public inspection in the office of the Manager during regular business hours, 8:15 a.m. to 4:45 p.m., Monday through Friday.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to delete and reserve 7 CFR 401.144, but these provisions shall remain in effect for FCIC combined crop insurance policies issued for crop years prior to 1980. The Corporation also proposes to issue a new Part 426 in Chapter IV of Title 7 of the Code of Federal Regulations effective with the 1980 and subsequent combined crops, which shall remain in effect until amended or superseded, to read as follows:

PART 426—COMBINED CROP INSURANCE

Subpart—Regulations for the 1980 and Succeeding Crop Years

Sec.

Authority: Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulation for the 1980 and Succeeding Crop Years

§ 426.1 Availability of Combined Crop Insurance.

Insurance shall be continued under the provisions of this subpart on combined crops in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this chapter the names of the counties in which combined crop insurance will be offered.

§ 426.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for combined crop which shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

§ 426.3 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

§ 426.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest

to any benefit under the contract except as provided in the policy.

§ 426.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the combined crop insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $20,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 426.6 The contract.

(a) The contract shall cover the insurable crops as provided in the applicable crop policies. The contract shall consist of the combined crop policy, the applicable crop policies and appendixes, and the provisions of the county actuarial table which specify the crops that are applicable to the combined crop policy. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the office for the county.

§ 426.7 The policy.

(a) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1969 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a combined crop contract issued under such prior regulations, without the filing of a new application.

(b) The provisions of the Combined Crop Insurance Policy for the 1980 and succeeding crop years are as follows.

Combined Crop Insurance Policy

Terms and Conditions

1. As to each insured crop, the provisions for that crop contained in the individual policy and appendix for such crop on file in the office for the county shall apply except as provided otherwise herein. In addition, for the purpose of combined crop insurance, those parts of the individual policies which refer to individual crops shall be considered to mean all crops insured under this policy.

2. (a) In addition to section 2 of the applicable individual crop policies, the following shall apply: "The crops insured are all of the crops for which production guarantees and premium rates are shown on the county actuarial table for combined crop insurance, and which are grown on insured acreage."

(b) Insurance shall not be considered to have attached to any acreage of rye for any crop year when the contract is canceled or terminated for indebtedness for that crop year.

3. In lieu of subsection 8(b) of the Terms and Conditions of the applicable individual crop policies, the following shall apply: "Indemnities shall be determined separately for each unit. The amount of indemnity with respect to any unit shall be determined in the following manner: (a) for each insured crop on the unit, multiply the insured acreage by the product of the applicable commodity production guarantee per acre, times the insured interest, times the applicable price for computing indemnities, (b) for each insured crop on the unit multiply the product of the total production to be counted times the insured interest by the applicable price for computing indemnities, (c) add the dollar amounts obtained for each of the respective insured crops in (a) above, and (d) add the dollar amounts obtained for each of the respective insured crops in (b) above, and subtract this sum from the sum obtained in (c) above." *Provided*, That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

4. In lieu of section 5 of the Terms and Conditions of the appliable individual crop policies, the following shall apply:

(a) The annual premium is earned and payable at the time of seeding or planting and the amount thereof shall be determined for each unit by multiplying the applicable diversification factor(s) times the applicable premium factor(s), times the premium adjustment percentage in subsction (c) of this section.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

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% ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE																
	Numbers of Years Continuous Experience Through Previous Year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
Loss Ratio 1/ Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
.00 – .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 – .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 – .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 – .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 – 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

% ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE																
	Number of Loss Years Through Previous Year 2/															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Loss Ratio 1/ Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
1.10 – 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 – 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 – 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 – 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 – 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 – 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 – 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 – 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 – 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 – Up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

1/ Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

2/ Only the most recent 15 crop years will be used to determine the number of "Loss Years" (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year).

BILLING CODE 3410-08-C

(d) Any premium adjustment percentage in subsection (c) of this section shall be transferred to the same insured who changes to individual crop contracts.

5. In lieu of subsection 12(c) of the Terms and Conditions of the applicable individual crop policies, the following shall apply: Following are the cancellation and termination dates:

Counties	Cancellation date	Termination date for indebtedness
All counties	Dec. 31	March 31.

6. Section 4 of the applicable crop appendixes will not be applicable to combined crop insurance.

7. For the purpose of combined crop insurance the term:

(a) "Acturial table," in lieu of section 1(a) of the Appendix to the applicable individual crop policies, means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the office for the county, and show the production guarantees, coverage levels, premium factors, dollar coverage per acre, applicable prices for computing indemnities, the applicable diversification factor table, insurable and uninsurable acreage, and related information regarding combined crop insurance in the county.

(b) "Diversification factor" means a factor applied to reduce the premium when there is a diversity of crops seeded. The factor is provided on the county acturarial table.

(c) "Insurance unit," notwithstanding that portion of the first sentence preceding item (1) of section (k) of the Appendix to the applicable individual crop policies, means all insurable acreage of all insured crops in the county at the time of seeding. Otherwise the provisions of section (k) of the Appendix to the applicable individual crop policies apply to combined crop insurance.

(d) "Premium factor" means the factor provided on the county acturarial table for use in determining the premium.

This proposal has been reviewed under the USDA criteria established to implement Executive Order NO. 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Draft Impact Analysis has been prepared and is available from Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4088, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

Note.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942, and OMB Circular NO. A-40.

Approved by the Board of Directors on July 24, 1979.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

[FR Doc 79-22387 Filed 7-30-79; 8:45 am]

BILLING CODE 3410-08-M

[7 CFR Parts 401, 428]

Proposed Sunflower Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule prescribes procedures for insuring sunflower crops effective with the 1980 crop year. This rule combines provisions from previous regulations for insuring sunflowers in a shorter, clearer, and more simplified document which will make the program more effective administratively. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions must be submitted not later than October 1, 1979, to be assured of consideration.

ADDRESS: Written comments on this proposed rule should be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, 202-447-3325.

SUPPLEMENTARY INFORMATION: Under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), it is proposed that there be established a new Part 428 of Chapter IV in Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 428, Sunflower Crop Insurance.

This part prescribes procedures for insuring sunflower crops effective with the 1980 crop year.

All previous regulations applicable to insuring sunflower crops as found in 7 CFR 401.101-401.111, and 401.152, will not be applicable to 1980 and succeeding sunflower crops but will remain in effect for Federal Crop Insurance Corporation (FCIC) sunflower insurance policies issued for the crop years prior to 1980.

It has been determined that combining all previous regulations for insuring sunflower crops into one shortened, simplified, and clearer regulation would be more effective administratively.

In addition, proposed 7 CFR Part 428 provides (1) for a Premium Adjustment Table which replaces the current premium discount provisions and includes a maximum 50 percent reduction for good insurance experience, as well as premium increases for unfavorable experience, on an individual contract basis, (2) for a minimum appraisal of 50 percent of the applicable guarantee for acreage released and planted to another insurable crop, (3) that any premium not paid by the termination date will be increased by a 9 percent service fee with a 9 percent simple interest charge applying to any unpaid balances at the end of each subsequent 12-month period thereafter, (4) that the time period for submitting a notice of loss be extended from 15 days to 30 days, (5) that the 60-day time period for filing a claim be eliminated, (6) that three coverage level options be offered in each county, (7) that the Actuarial Table shall provide the level which will be applicable to a contract unless a different level is selected by the insured and the conversion level will be the one closest to the present percent level offered in each county, (8) for an increase in the limitation from $5,000 to $20,000 in those cases involving good faith reliance on misrepresentation, as found in 7 CFR Part 428.5 of these proposed regulations, wherein the Manager of the Corporation is authorized to take action to grant relief, (9) that the three year rotation requirement for insurability for acreage planted to sunflowers be reduced to two years, and (10) that the production guarantee will now be shown on a harvested basis with a reduction of the lesser of 100 pounds or 20 percent of the guarantee for any unharvested acreage.

The proposed Sunflower Crop Insurance regulations provide a December 31 cancellation date for all sunflower producing counties. These regulations, and any amendments thereto, must be placed on file in the Corporation's office for the county in which the insurance is available not later than 15 days prior to the cancellation date, in order to afford farmers an opportunity to examine them before the cancellation date of December 31, 1979, before they become effective for the 1980 crop year.

All written submissions made pursuant to this notice will be available for public inspection in the office of the Manager during regular business hours, 8:15 a.m. to 4:45 p.m., Monday through Friday.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to delete and reserve 7 CFR 401.152, but these provisions shall remain in effect for FCIC sunflower insurance policies issued for crop years prior to 1980. The Corporation also proposes to issue a new Part 428 in Chapter IV of Title 7 of the Code of Federal Regulations effective with the 1980 and subsequent crops of sunflowers, which shall remain in effect until amended or superseded, to read as follows:

PART 428—SUNFLOWER SEED CROP INSURANCE

Subpart—Regulations for the 1980 and Succeeding Crop Years

Sec.

Authority: Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1980 and Succeeding Crop Years

§ 428.1 Availability of Sunflower Seed Insurance.

Insurance shall be offered under the provisions of this subpart on sunflower seed in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this chapter the names of the counties in which sunflower seed insurance will be offered.

§ 428.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sunflower seed which shall be shown on the county actuarial table on file in the office for the county and maybe changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

§ 428.3 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

§ 428.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

§ 428.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sunflower seed insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $20,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 428.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. Such acceptance shall be effective upon the date the notice of acceptance is mailed to the applicant. The contract shall cover the sunflower seed crop as provided in the policy. The contract shall consist of the application, the policy, the attached appendix, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the office for the county.

§ 428.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the sunflower seed crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date on file in the office for the county.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, but placing the extended date on file in the office for the county and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for 1969 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a sunflower contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Sunflower Seed Insurance Policy for the 1980 and succeeding crop years, and the Appendix to the Sunflower Seed Insurance Policy are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Application for 19— and Succeeding Crop Years, Sunflower Crop Insurance Contract

(Contract Number)

(Identification Number)

(Name and Address) (Zip Code)

(County) (State)
Type of Entity
Applicant Is Over 18 Yes—No—

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the sunflowers planted on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and price at which indemnities shall be computed. The premium rates and production guarantees shall be those shown on the applicable county acuarial table filed in the office for the county for each crop year.
Level Election———Price Election———

Example: for the 19— Crop Year Only (100 Percent Share)

Location/ farm No.	Guarantee per acre*	Premium per acre **	Practice

*Your guarantee will be on a unit basis (acres x per acre guarantee x share).
**Your premium is subject to adjustment in accordance with section 5(c) of the policy.

B. When notice of acceptance of this application is mailed to the applicant by the Corporation, the contract shall be in effect for the crop year specified above, unless the time for submitting applications has passed at the time this application is filed, and shall continue for each succeeding crop year until canceled or terminated as provided in the contract. This accepted application, the following sunflower insurance policy, the attached appendix, and the provisions of the county actuarial table showing the production guarantees, coverage levels, premium rates, prices for computing indemnities, and insurable and uninsurable acreage shall contitute the contract. Additional information regarding contract provisions can be found in the county regulations folder on file in the office for the county. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

(Code No./Witness to Signature)

(Signature of Applicant)
(Date)———, 19—
Address of Office for County:

Phone
Location of Farm Headquarters:

Phone

Sunflower Crop Insurance Policy

Terms and Conditions

Subject to the provisions in the attached appendix:

1. Causes of Loss. (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, insects, plant disease, wildlife, earthquake or fire occurring within the insurance period, subject to any exceptions, exclusions or limitations with respect to causes of loss shown on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production, as determined by the Corporation, due to (1) the neglect or malfeasance of the insured, any member of the insured's household, the insured's tenants or employees, (2) failure to follow recognized good farming practices, (3) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or (4) any cause not specified as an insured cause in this policy as limited by the actuarial table.

2. Crop and Acreage Insured. (a) The crop insured shall be sunflower seed (hereinafter referred to as "sunflowers") which is initially planted for harvest as sunflowers and which is grown on insured acreage and for which the actuarial table shows a guarantee and premium rate per acre.

(b) The acreage insured for each crop year shall be that acreage planted to sunflowers on insurable acreage as shown on the actuarial table, and the insured share therein as reported by the insured or as determined by the Corporation, whichever the Corporaton shall elect: *Provided*, That insurance shall not attach or be considered to have attached, as determined by the Corporation, to any acreage (1) where premium rates are established by farming practices on the actuarial table, and the farming practices carried out on any acreage are not among those for which a premium rate has been established, (2) not reported for insurance as provided in section 3 if such acreage is irrigated and and irrigated practice is not provided for such acreage on the actuarial table, (3) which is destroyed and after such destruction it was practical to replant to sunflowers and such acreage was not replanted, (4) which are not planted in rows far enough apart to permit cultivation with a row cultivator as determined by the Corporation, (5) initially planted after the date on file in the office for the county which has been established by the Corporation as being too late to initially plant and expect a normal crop to be produced, (6) of volunteer sunflowers, (7) planted to a type or variety of sunflowers not established as adapted to the area or shown as noninsurable on the actuarial table, or (8) on which sunflowers, potatoes, dry beans, soybeans, rape, or mustard have been grown the preceding crop year.

(c) Insurance may attach only by written agreement with the Corporation on acreage which is planted for the development or production of hybrid seed or for experimental purposes.

3. Responsibility of Insured to Report Acreage and Share. The insured shall submit to the Corporation on a form prescribed by the Corporation, a report showing (a) all acreage of sunflowers planted in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share and (b) the insured's share therein at the time of planting. Such report shall be submitted each year not later than the acreage reporting date on file in the office for the county.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities. (a) For each crop year of the contract, the production guarantees, coverage levels, and prices at which indemnities shall be computed shall be those shown on the actuarial table.

(b) The production guarantees per acre shall be reduced by the lesser of 100 pounds per acre or 20 percent for any unharvested acreage.

5. Annual Premium. (a) The annual premium is earned and payable at the time of planting and the amount thereof shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of planting, times the applicable premium adjustment percentage in subsection (c) of this section.

(b) For premium adjustment purposes, only the years during the premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

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% ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE																
	Numbers of Years Continuous Experience Through Previous Year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
Loss Ratio 1/ Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
.00 – .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 – .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 – .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 – .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 – 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

% ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE																
	Number of Loss Years Through Previous Year 2/															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Loss Ratio 1/ Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
1.10 – 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 – 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 – 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 – 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 – 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 – 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 – 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 – 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 – 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 – Up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

1/ Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

2/ Only the most recent 15 crop years will be used to determine the number of "Loss Years" (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year).

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(d) Any amount of premium for an insured crop which is unpaid on the day following the termination date for indebtedness for such crop shall be increased by a 9 percent service fee, which increased amount shall be the premium balance, and thereafter, at the end of each 12-month period, 9 percent simple interest shall attach to any amount of the premium balance which is unpaid: *Provided,* When notice of loss has been timely filed by the insured as provided in section 7 of this policy, the service fee will not be charged and the contract will remain in force if the premium is paid in full within 30 days after the date of approval or denial of the claim for indemnity; *however,* if any premium remains unpaid after such date, the contract will terminate and the amount of premium outstanding shall be increased by a 9 percent service fee, which increased amount shall be the premium balance. If such premium balance is not paid within 12 months immediately following the termination date, 9 percent simple interest shall apply from the termination date and each year thereafter to any unpaid premium balance.

(e) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any Act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

6. Insurance Period. Insurance on insured acreage shall attach at the time the sunflowers are planted and shall cease upon the earliest of (a) final adjustment of a loss, (b) combining, threshing, or removal of the sunflowers from the field, (c) November 30 of the calendar year in which sunflowers are normally harvested, or (d) total destruction of the insured sunflower crop.

7. Notice of Damage or Loss. (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the office for the county.

(b) Notice shall be given promptly if, during the period before harvest, the sunflowers on any unit are damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or if the insured wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late or impractical to replant to sunflowers. Notice shall also be given when such acreage has been put to another use.

(c) In addition to the notices required in subsection (b) of this section, if an indemnity is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county not later than 30 days after the earliest of (1) the date harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire sunflower crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines there are extenuating circumstances.

(d) Any insured acreage which is not to be harvested and upon which an indemnity is to be claimed shall be left intact until inspected by the Corporation.

(e) The Corporation may reject any claim for indemnity if any of the requirements of this section are not met.

8. Claim for Indemnity. (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of sunflowers on the unit and that any loss of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of sunflowers on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production of sunflowers to be counted for the unit, (3), multiplying the remainder by applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share: *Provided,* That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production.

(1) Mature production which grades No. 2 or better shall be reduced .12 percent for each .1 percentage point of moisture in excess of 12.0 percent; and if, due to insurable causes, any sunflowers do not grade No. 2 or better, as defined by the North Dakota Grain Inspection Service Incorporated, on the basis of test weight or seed damage, the production shall be adjusted by (i) dividing the value per pound of the damaged sunflowers (as determined by the Corporation) by the price per pound of No. 2 sunflowers and (ii) multiplying the result by the number of pounds of such sunflowers. The applicable price for No. 2 sunflowers shall be the local market price on the earlier of: the day the loss is adjusted or the day the damaged sunflowers were sold.

(2) Any harvested production from volunteer corps growing with the planted sunflower crop on acreage which the Corporation has not given consent to be put to another use shall be counted as sunflowers on a weight basis.

(3) Appraised production to be counted shall include: (i) greater of the appraised production of 50 percent of the applicable guarantee for any acreage which, with the consent of the Corporation, is planted before sunflower harvest becomes general in the current crop year to any other crop insurable on such acreage (excluding any crop(s) maturing for harvest in the following calendar year), (ii) any appraisals by the Corporation for potential production on harvested acreage and for uninsured causes and poor farming practices, (iii) not less than the applicable guarantee for any acreage which is abandoned or put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause, and (iv) only the appraisal in excess of the lesser of 100 pounds per acre or 20 percent of the production guarantee for all other unharvested acreage.

(d) The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as production in determining the amount of loss under the contract. *However,* if consent is given to put acreage to another use and the Corporation determines that any such acreage (1) is not put to another use before harvest of sunflowers becomes general in the county, (2) is harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

9. Misrepresentation and Fraud. The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

10. Transfer of Insured Share. If the insured transfers any part of the insured share during the crop year, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the original insured for the current crop year. Any transfer shall be made on an approved form.

11. Records and Access to Farm. The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all sunflowers produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

12. Life of Contract: Cancellation and Termination. (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel the insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding such crop year.

(b) Except as provided in section 5(d) of this policy, the contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year: *Provided,* That the date of payment for

premium (1) if deducted from an indemnity claim shall be the date the insured signs such claim or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(c) Following are the cancellation and termination dates:

State	Cancellation date	Termination date for indebtedness
All States	Dec. 31	Mar. 31

(d) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (a), (b) and (c) of this section, and section 7 of the Appendix, the contract shall continue in force for each succeeding crop year.

Appendix—Additional Terms and Conditions

1. Meaning of Terms. For the purposes of sunflower crop insurance;

(a) "Acturarial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the office for the county, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding sunflower insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

(c) "Crop year" means the period within which the sunflower crop is normally grown and shall be designated by the calendar year in which the sunflower crop is normally harvested.

(d) "Harvest" means the severance of mature sunflowers from the land for combining or threshing.

(e) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the county actuarial tble.

(f) "Insured" means the person who submitted the application accepted by the corporation.

(g) "Office for the county" means the Corporation's office serving the county shown on the application for insurance of such office as may be designated by the Corporation.

(h) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(i) "Share" means the interest of the insured as landord, owner-operator, or tenant in the insured sunflower crop at the time of planting as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided,* That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(j) "Tenant" means a person who rents land from another person for a share of the sunflower crop or proceeds therefrom.

(k) "Unit" means all insurable acreage of sunflowers in the county on the date of planting for the crop year (1) in which the insured has a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sunflower crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in the office for the county or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. Acreage Insured. (a) The Corporation reserves the right to limit the insured acreage of sunflowers to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the planting of sunflowers.

(b) If the insured does not submit an acreage report on or before the acreage reporting date on file in the office for the county, the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage on any unit(s) to be "zero". If the insured does not have a share in any insured acreage in the county for any year, the insured shall submit a report so indicating. Any acreage report submitted by the insured may be revised only upon approval of the Corporation.

3. Irrigated Acreage. (a) Where the actuarial table provides for insurance on an irrigated practice, the insured shall report as irrigated only the acreage for which the insured has adequate facilities and water to carry out a good irrigation practice at the time of planting.

(b) Where irrigated acreage is insurable, any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, as determined by the Corporation, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

4. Annual Premium. (a) If there is no break in the continuity of participation, any premium adjustment applicable under section 5 of the policy shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(b) If there is a break in the continuity of participation, any reduction in premium earned under section 5 of the policy shall not thereafter apply; *however,* any previous unfavorable insurance experience shall be considered in premium computation following a break in continuity.

5. Claim for and Payment of Indemnity. (a) Any claim for indemity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) In determining the total production to be counted for each unit, production from units on which the production has been commingled will be allocated to such units in proportion to the liability on each unit.

(c) There shall be no abandonment to the Corporation of any insured sunflower acreage.

(d) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided,* That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

(e) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. *However,* in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(f) If the insured is an individual who dies, disappears, or it judicially declared incompetent, or the insured is an entity other than an individual and such entity is dissolved after the sunflowers are planted for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

(g) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section or section 8 of the policy are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

6. Subrogation. The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The Corporation thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

7. Termination of the Contract. (a) The contract shall terminate if no premium is earned for five consecutive years.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; *however,* if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership

unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

8. Coverage Level and Price Election. (a) If the insured has not elected on the application a coverage level and price at which indemnities shall be computed from among those shown on the actuarial table, the coverage level and price election which shall be applicable under the contract, and which the insured shall be deemed to have elected, shall be as provided on the actuarial table for such purposes.

(b) The insured may, with the consent of the Corporation, change the coverage level and price election for any crop year on or before the closing date for submitting applications for that crop year.

9. Assignment of Indemnity. Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

10. Contract Changes. The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 12 of the policy.

This proposal has been reviewed under the USDA criteria established to implement Executive Order No. 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Draft Impact Analysis has been prepared and is available from Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4088, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

Note.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942, and OMB Circular No. A-40.

Approved by the Board of Directors on July 24, 1979.

Peter F. Cole, Secretary,

Federal Crop Insurance Corporation.

[FR Doc. 79-23494 Filed 7-30-79; 8:45 am]

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Agricultural Marketing Service

[7 CFR Part 920]

[Docket No. AO-381]

Apples Grown in States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; Decision and Referendum Order on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision proposes a marketing agreement and order regulating the handling of apples grown in a production area comprised of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Apple producers will be given the opportunity to vote in a referendum to determine if they favor the proposed marketing order.

The proposed order would establish a committee of growers and handlers for local administration. It would provide for establishment of maturity requirements for apples produced in the designated area based on committee recommendations. Also, it would authorize the committee to engage in production and marketing research, and promotional activities designed to promote distribution and consumption of apples. Consumers should benefit from an improved product and growers by an expanded market.

DATE: The representative period for purposes of the referendum herein ordered is July 1, 1978, through June 30, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Fruit Branch, Fuit and Vegetable Division, AMS. USDA, Washington, D.C. 20250, Phone: (202) 447-5975.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing—Issued October 26, 1978; published October 31, 1978. (43 F.R. 50691)

Notice of Recommended Decision—Issued May 11, 1979; published May 17, 1979. (44 F.R. 28806)

PRELIMINARY STATEMENT: The proposed marketing agreement and order were formulated on the record of a public hearing held at West Springfield, Massachusetts, December 4-5, 1978, and at Brentwood (Epping), New Hampshire, December 7, 1978, Notice of the hearing was published in the October 31, 1978, issue of the Federal Register. The notice set forth a proposed order submitted by the New England Apple Marketing Order Study Committee on behalf of apple producers and handlers in the proposed production area.

On the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, on May 11, 1979, filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision which contained notice of the opportunity to file by June 18, 1979, written exceptions thereto. Comments favoring the proposed marketing order were submitted by Mr. Robert Lievens, Woodmont Orchards, Londonderry, New Hampshire; Mr. Donald B. Ricker, Ricker Hill Orchards, Turner, Maine; Mr. David E. Rowe, Mapleview Orchards, Newport, Maine; and Mr. Rockwood N. Berry, Executive Vice President of the New York and New England Apple Institute, Westfield, Massachusetts.

RULINGS ON EXCEPTIONS: Exceptions to the recommended decision were filed by Langrock Sperry Parker & Stahl, attorneys at law, on behalf of Shoreham Cooperative Apple Producers Association, Shoreham, Vermont. One exception stated that Vermont producers were improperly denied a hearing within Vermont on the proposed order. Ample opportunity was given all interested persons to participate in the hearing which was held in two sessions—one at West Springfield, Massachusetts, on December 4-5, 1978, the other at Brentwood (Epping), New Hampshire, on December 7, 1978. A substantial effort was made to bring the hearing to the attention of growers, handlers, and others. The hearing was held following publication in the Federal Register on October 31, 1978, of a notice announcing the hearing. That notice contained the proposed order and was issued in accordance with the Department's Rules of Practice Governing Proceedings to Formulate Marketing Agreements and Marketing Orders (7 CFR Part 900). A copy of this notice was mailed to all known growers in the production area, including Vermont growers; a press release announcing the hearings was issued on October 30, 1978, and was made available to the news media in the production area; and a copy of the notice was mailed November 13, 1978, to the Governor of Vermont. Other exceptions challenged the exercise of Federal jurisdiction in this instance, disputed the need for a regulatory program to effectuate the declared purposes of the act, and claimed that Vermont is improperly included in the proposed production area.

Each of these exceptions has been considered carefully and fully in conjunction with the record evidence and the recommended decision pertaining thereto in arriving at the findings and conclusions as set forth in this decision. It is determined that the findings and conclusions and the regulatory provisions as set forth in the recommnended decision are appropriate and are herby affirmed. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with such exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

The material issues, findings and conclusions, rulings and general findings of the recommended decision published May 17, 1979, in Volume 44 of the Federal Register (44 FR 28806) are hereby incorporated by reference herein and made a part hereof, subject to the following corrections.

On page 28807, second column, second paragraph under *Findings and conclusions* (1), lines 20 & 21, change ". . . production area in which are handled . . ." to ". . . production area, which are handled in . . ."

On page 28811, first column, last paragraph, line 15, delete "to"

On page 28811, second column, first full paragraph, lines 10 & 11, change ". . . submitted. In conformance with the procedure . . ." to ". . . submitted in conformance with the procedure . . ."

On page 28814, second column, last paragraph, line 8, insert "raisins" following "almonds,"

On page 28816, third column, last paragraph, line 4, change "not" to "now"

On page 28818, third column, paragraph (b)(1), line 15, change ". . . or each . . ." to ". . . for each . . ."

On page 28819, first column, § .26, line 13, change "vacany" to "vacancy"

On page 28819, first column, § .27, line 8, change "unitl" to "until"

On page 28819, third column, § .32, line 1, change "commitetee" to "committee"

On page 28820, first column, paragraph (b) of § .41, line 23, change "assessment" to "assessments"

On page 28821, first column, § .52, paragraph (a)(3), line 2, change "so" to "to"

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Apples Grown in States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont," and *Marketing Order Regulating the Handling of Apples Grown in States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont,* which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire decision, except the annexed marketing agreement, be published in the Federal Register. The regulatory provisions of the marketing agreement are identical with those contained in the order which is published with this decision.

Referendum order. It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*) to determine whether the issuance of the annexed order regulating the handling of apples grown in States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production area in the production of the regulated commodity for market.

The representative period for the conduct of such referendum is hereby determined to be July 1, 1978, to June 30, 1979.

The agents of the Secretary to conduct such referendum are hereby designated to be William J. Doyle and Ronald L. Cioffi, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250.

A Final Impact Analysis is available from Malvin E. McGaha, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, Phone (202) 447-5975.

Copies of this Decision are being mailed to known interested persons. Others may obtain copies from Mr. McGaha.

Signed at Washington, D.C., on: July 26, 1979.

P. R. "Bobby" Smith,

Assistant Secretary for Marketing and Transportation Services.

Marketing Order[1] Regulating the Handling of Apples Grown in States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Findings

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order, regulating the handling of apples grown in States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Upon the basis of the record it is found that:

(1) The order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The order regulates the handling of apples grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The order is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) The order prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of apples grown in the production area; and

(5) All handling of apples grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of apples shall be in conformity to and in compliance with the following terms and conditions:

The provisions of the proposed order contained in the recommended decision issued by the Deputy Administrator on May 11, 1979, and published in the Federal Register on May 17, 1979 (44 FR 28806), shall be and are the terms and provisions of this order, and are set forth in full herein.

Marketing Order[1] Regulating the Handling of Apples Grown in States

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

PART 920—APPLES GROWN IN THE STATES OF CONNECTICUT, MAINE, MASSACHUSETTS, NEW HAMPSHIRE, RHODE ISLAND, AND VERMONT

Definitions

Authority: Secs. 920.0 to 920.72, inclusive, issued under Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

Recommended Decision published May 17, 1979 (44 FR 28806)

Definitions

§ 920.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated.

§ 920.2 Act.

"Act" means Public Act No. 10, 73rd Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601–674).

§ 920.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 920.4 Production area.

"Production area" means the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

§ 920.5 Apples.

"Apples" means all of the varieties grown in the production area classified botanically as Malus sylvestris.

§ 920.6 Varieties.

"Varieties" means and includes all classifications or subdivisions of apples.

§ 920.7 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period beginning on July 1 of one year and ending on the last day of June of the following year or such other period as the committee, with the approval of the Secretary, may prescribe.

§ 920.8 Committee.

"Committee" means the New England Apple Administrative Committee established pursuant to § 920.20.

§ 920.9 Grower.

"Grower" is synonymous with "producer" and means any person who produces apples for market, and who has a proprietary interest therein.

§ 920.10 Handler.

"Handler" is synonymous with "shipper" and means any person who sells or handles or causes apples to be handled, or sold.

§ 920.11 Handle.

"Handle" and "ship" are synonymous and mean to sell, consign, deliver, or transport apples, or cause apples to be sold, consigned, delivered, or transported within the production area or between the production area and any point outside thereof: *Provided*, That such terms shall not include: (a) a contract or common carrier transporting apples owned by another person, or (b) the transportation of apples from the location where grown, to a packinghouse, or storage facility within the production area or to such other points as the committee may prescribe with approval of the Secretary for the purpose of storing, or having the apples prepared for market subject to such rules and regulations as the committee may prescribe with the approval of the Secretary.

§ 920.12 District.

"District" means the applicable one of the following described subdivisions of the production area:

(a) "District 1" shall include the State of Maine;

(b) "District 2" shall include the State of New Hampshire;

(c) "District 3" shall include the State of Vermont;

(d) "District 4" shall include the State of Massachusetts;

(e) "District 5" shall include the States of Connecticut and Rhode Island.

§ 920.13 Container.

"Container" means any box, bag, crate, basket, carton, package, bulk carton, or bin, or any other type of receptacle used in packaging or handling of apples.

§ 920.14 First sale unit.

"First sale unit" means approximately 40 pounds of apples in any container or containers or in bulk.

Administrative Body

§ 920.20 Establishment and membership.

There is hereby established a New England Apple Administrative Committee consisting of fifteen (15) members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. Ten (10) of the members and their respective alternates shall be growers or officers or employees of growers, henceforth referred to as "grower members" of the committee. Each of the five (5) districts shall each be represented by two (2) grower members and their respective alternates: *Provided*, That each shall be a producer of apples in his or her

respective district; and *Provided further,* That at least one grower member or alternate representing "District 5" shall be from the State of Rhode Island. Four (4) members and their respective alternates shall be handlers or officers or employees of handlers, henceforth referred to as "handler members" of the committee. Handler members and alternates shall be selected from the production area at large: *Provided,* That not more than two members may be from one district. The committee shall be increased by one public member and respective alternate nominated by the committee and selected by the Secretary. The committee, with the approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the public member and alternate.

§ 920.21 Term of office.

(a) The term of office of each member and alternate member of the committee shall be for three fiscal periods beginning July 1 and ending the third succeeding June 30: *Provided,* That the initial term of office of one grower member and alternate member of the committee from each district shall be for three years beginning on or about July 1 and ending on the third succeeding June 30. The initial term of office of one grower member and alternate member from each district shall be for two years beginning on or about July 1 and ending on the second succeeding June 30. The initial term of office of two handler members and alternate members shall be for three years beginning on or about July 1 and ending on the third succeeding June 30. The initial term of office of the other two handler members and alternate members shall be for two years beginning on or about July 1 and ending on the second succeeding June 30. (Determination of length of term of initial members shall be by lot.) No member may serve more than two successive terms. The committee, with the approval of the Secretary, may change the term of office of members and alternate members.

(b) Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

§ 920.22 Nomination.

(a) *Initial members.* Nominations for each of the initial members of the committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by individual growers and handlers. Such nominations may be made by means of a meeting of all handlers, and a meeting of growers in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for the initial members are not filed pursuant to, and within the time specified in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selection shall be on the basis of the representation provided for in § 920.20.

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than May 15, in the year in which nominations are to be made, a meeting of growers in each district and a meeting of handlers for the purpose of designating nominees for successor members and alternate members of the committee, which shall be publicized and open to all growers and handlers. At each meeting, a chairman and a secretary shall be selected by persons eligible to participate therein. The chairman shall announce at the meeting the number of votes cast for each person nominated for member or alternate member and shall submit promptly to the committee a complete report concerning such meeting. The committee shall, in turn, promptly submit a copy of each such report to the Secretary. (2) Only growers, including duly authorized officers or employees of growers, who are present at such nomination meetings may participate in the nominations for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which the grower produces apples. No grower shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of apples, such person may vote either as a grower or as a handler, but not as both. (3) Only handlers, including duly authorized officers or employees of handlers, who are present at such nomination meetings may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote, which vote shall be weighted by the volume of apples handled by such handler during the preceding fiscal year. If a person is both a grower and a handler of apples, such person may vote either as a grower or as a handler but not as both.

§ 920.23 Selection.

From the nominations made pursuant to § 920.22, or from other qualified persons, the Secretary shall select the 10 grower members of the committee, the four handler members of the committee, and an alternate for each such member.

§ 920.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 920.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 920.20.

§ 920.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 920.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in § 920.22 and § 920.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 920.20.

§ 920.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act until a successor for such member is selected and has qualified.

§ 920.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 920.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers; and to select subcommittees, and define the duties of each;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and to define the duties and procedures of each;

(c) To submit to the Secretary at the beginning of each fiscal year a budget for such fiscal year, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such fiscal year.

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare a statement of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To require adequate fidelity bonds for all persons handling funds;

(g) To cause its books to be audited by a competent public accountant at least once each fiscal year, and at such other times as the Secretary may request;

(h) To act as intermediary between the Secretary and any grower or handler;

(i) To provide an adequate system for estimating the total season crop of apples and to make such determinations, as it may deem necessary, or as may be prescribed by the Secretary, in connection with the administration of this part;

(j) To investigate the growing, handling, and marketing conditions with respect to apples, and to assemble data in connection therewith;

(k) To engage in such research relating to improved packaging and/or to the determination of maturity, grade and condition standards for apples as may be approved by the Secretary;

(l) To contract with appropriate parties for the purpose of conducting production and marketing research programs, including paid advertising, promotion, and publicity for apples;

(m) To submit such available information, including verified reports, as the Secretary may request;

(n) To notify producers and handlers of meetings of the committee; and

(o) To give the Secretary the same notice of meetings of the committee as is given to its members.

§ 920.32 Procedure.

(a) Eight members of the committee, six of whom shall be grower members including alternates acting for members, shall constitute a quorum; and any action of the committee shall require at least eight concurring votes.

(b) The committee may vote by telegraph, telephone, or other means of communication, and any vote so cast shall be confirmed promptly in writing: *Provided,* That, if an assembled meeting is held, all votes shall be cast in person.

§ 920.33 Expenses and compensation.

The members of the committee and alternates when acting as members, or when requested by the committee to attend a committee meeting or to perform another committee function shall serve without compensation; but shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part.

§ 920.34 Annual report.

The committee shall, as soon as practicable after the end of the fiscal year, prepare and mail an annual report to the Secretary and make a copy available to each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) a review of the operations during the fiscal year; (b) a summary of marketing research and development, promotion and advertising activities, if any; and (c) any recommendations for changes in the program.

Expenses and Assessments

§ 920.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal year.

§ 920.41 Assessments.

(a) Each person who first handles apples shall, with respect to the apples so handled by such person, pay to the committee upon demand such person's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during each fiscal year. Each such person's share of such expenses shall be equal to the ratio between the total quantity of apples handled by such handler as the first handler thereof during the applicable fiscal year and the total quantity of apples so handled by all persons during the same fiscal year. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment not to exceed 5 cents per first sale unit or equivalent in containers or in bulk to be paid by each such person. At any time during or after the fiscal year, the Secretary may, subject to the limitations of this paragraph, increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. A rate of assessment higher than 5 cents per first sale unit may be established but first must be approve by at least two-thirds of the growers voting or two-thirds of the volume of apples voted in a referendum. Such assessment shall be applied to all apples handled during the applicable first year. In order to provide funds for the administration of the provisions of this part during the fiscal year before sufficient operating income is available from assessments, the committee may accept the payment of assessments in advance and may also borrow money for such purpose.

(c) The committee shall impose a late payment charge on any handler who fails to pay his assessment within the time prescribed by the committee. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the committee shall impose an additional charge in the form of interest on such outstanding amount. The rate of such charges shall be prescribed by the committee, with the approval of the Secretary.

§ 920.42 Accounting.

(a) If, at the end of a fiscal year the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(1) Except as provided in paragraphs (a)(2) and (3) of this section, each person entitled to a proportionate refund of any excess assessment shall be credited with such refund against the operation of the following fiscal year unless such person demands payment thereof, in which event it shall be paid to such person: *Provided,* That any sum paid by a person in excess of such person's pro rata share of the expenses during any fiscal year may be applied by the committee at the end of such fiscal year to any outstanding obligations of such person.

(2) The committee, with the approval of the Secretary, may establish and maintain during one or more fiscal years, an operating monetary reserve in an amount, not to exceed approximately 1 fiscal year's operational expenses. Upon approval by the Secretary, funds in such reserve shall be available for use by the committee for all expenses pursuant to § 920.40.

(3) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds will be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in such member's possession to such member's successor in office and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and claims vested in such member pursuant to this part.

Research and Market Development

§ 920.45 Production research, marketing research, and market development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research and marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of apples. Such projects may provide for any form of marketing promotion, including paid advertising. The expenses of such projects shall be paid by funds collected pursuant to § 920.41.

(b) The committee, with the approval of the Secretary, may contract with any person or persons to carry out advertising, promotion, and publicity programs. No advertising, promotion or publicity programs shall be conducted with reference to any particular private brand or trade name and no such program shall disparage the quality, value, sale or use of any other agricultural commodity. The expenses of such programs shall be paid by funds collected pursuant to § 920.41.

Maturity Regulations.

§ 920.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to § 920.41 and § 920.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of apples within the production area;

(2) The estimated utilization of the crop, showing the quantity and percentages of the crop expected to be marketed through fresh fruit channels; the quantity and percent of the crop expected to be utilized in processed products; and storage information;

(3) Available supplies of competitive apples from outside the production area, and other competitive fruit;

(4) Other factors having a bearing on the marketing of apples;

(5) The type of maturity regulations expected to be recommended during the season; and

(6) The type of research and market development projects expected to be recommended during the season and the effect on utilization.

(b) In the event that it becomes advisable to substantially modify such marketing policy the committee shall submit to the Secretary a revised marketing policy setting forth the information as required in this section. The committee shall transmit a copy of each marketing policy report or revision thereof to the Secretary. Copies of all such reports shall be maintained in the office of the committee where they shall be available for examination by growers and handlers. The committee shall announce the contents of each marketing policy report, including each revised marketing policy report.

§ 920.51 Recommendations for regulations.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of apples in the manner provided in § 920.52, it shall so recommended to the Secretary.

(b) All meetings of the committee held for the purpose of formulating recommendations for regulations shall be open to growers and handlers. The committee shall give notice of each such meeting to growers and handlers by mailing a notice to each grower and handler who has filed a mailing address with the committee had requested such notice.

§ 920.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of apples whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may (1) specify a date or dates prior to which apples of any variety or varieties produced in any district or specified portion thereof may not be handled, or (2) specify external or internal maturity characteristics which the variety or varieties so produced must possess prior to being handled, or (3) specify such other requirements applicable to such variety or varieties as have been found to constitute a reliable maturity index. The committee may establish, with the approval of the Secretary, a procedure to permit handling of properly matured apples prior to any date established by regulation.

(b) The committee shall be informed immediately of any regulation issued by the Secretary and the committee shall promptly give notice thereof to growers and handlers.

§ 920.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that by reason of changed conditions, any regulations issued pursuant to § 920.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information that a regulation should be modified, suspended, or terminated with respect to any or all shipments of apples in order to effectuate the declared policy of the act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ 920.54 Exemptions.

(a) The committee may, with the approval of the Secretary, relieve from any or all requirements established under this part, the handling of apples for such specified purposes (including shipments to facilitate the conduct of marketing research and development

projects established pursuant to § 920.45), or in such minimum quantities, types of shipments, methods of handling, as may be prescribed.

(b) Except as otherwise provided the provisons of § 920.41 shall not apply to the first 250 first sale units of apples handled in any fiscal period by the person who produced them or such other higher quantity recommended by the committee and approved by the Secretary or to the handling of apples by any person: (1) for processing and juice; (2) in gift packages; (3) for distribution by relief agencies.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent apples handled under provisons of this section from entering into channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include requirements that handlers shall file applications and receive approval from the committee for authorization to handle apples pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the apples will not be used for any purpose not authorized by this section.

Reports

§ 920.60 Reports.

(a) Each grower shall furnish to the committee, at such times and for such periods as the committee may designate, reports covering the production, utilization, and disposition of his or her crop, to the extent necessary for the committee to perform its functions.

(b) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, all shipments of apples.

(c) Each grower and handler shall maintain for at least two succeeding fiscal years, such records of the production, utilization and disposition of apples or of apples received and disposed of by such grower and handler, as applicable, as may be necessary to verify the reports submitted to the committee pursuant to this section.

(d) All reports and records submitted by growers and handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular grower or handler from whom received: *Provided,* That such data and information may be combined, and made available to any person in the form of general reports in which the identities of the individual furnishing the information is not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous Provisions

§ 920.61 Compliance.

Except as provided in this part, no person shall handle apples except in conformity with the provisions of this part and the regulations issued thereunder.

§ 920.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 920.63 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature and shall continue in force until terminated in one of the ways specified in § 920.64.

§ 920.64 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least 1 day's notice by means of a press release or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the growers voting in such referendum. *Provided,* That such majority has, during a representative period determined by the Secretary, produced more than 50 percent of the volume of apples which were produced within the production area for fresh market. Such termination shall become effective on the first day of July subsequent to the announcement thereof by the Secretary.

(d) The Secretary shall, as soon as practicable after the close of the fifth fiscal year following the effective date of this part, conduct a referendum, to ascertain whether continuance of this part is favored by the growers. The Secretary shall terminate the provisions of this part if the Secretary finds by such referendum, as provided in paragraph (c) of the section, that termination is favored by growers.

(e) Upon petition and recommendation of 25 percent of the growers of record, the Secretary shall by referendum determine whether termination of this part is favored by growers, but such action shall be effected only if the petition is submitted for validation by the committee on or before December 15 of the current fiscal year. To determine by such referendum whether termination is favored by producers, the required percentages set forth in the act with respect to producer approval of the issuance of a marketing order shall be used.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 920.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary; execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been

transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 920.6 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 920.67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 920.68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 920.69 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the Act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 920.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgement, mistakes, or other acts, either of commission or ommission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 920.71 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 920.72 Amendments.

Amendments to this part may be proposed from time to time, by the committee or by the Secretary.

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Food Safety and Quality Service

[9 CFR Parts 318, 319, and 381]

Use of Enzyme Treatment Substances As Binders and Extenders

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would expand the approved list of binders and extenders for use in certain meat and poultry products. The proposal would amend the Federal meat and poultry products inspection regulations to permit the use of enzyme treated calcium reduced dried skim milk and enzyme treated sodium caseinate as binders or extenders in meat food products and poultry products. Both of these enzyme treated dairy products would be combined with calcium lactate and added to certain products in an amount sufficient to create a calcium/protein ratio which would be comparable to that which is found in skim milk. These proposed ingredients are similar to presently approved binders and extenders in terms of nutritional character and would be subject to the same limitations presently applied to dried skim milk, calcium reduced dried skim milk, and sodium caseinate.

DATE: Comments must be received on or before October 1, 1979.

ADDRESSES: Written comments to: Executive Secretariat, Attn: Annie Johnson, Food Safety and Quality Service, U.S. Department of Agriculture, Room 3807, South Agriculture Building, Washington, D.C. 20250. Oral comments on poultry regulations to: Mr. Irwin Fried, (202) 447-6042. See also "Comments" under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. Irwin Fried, Acting Director, Meat and Poultry Standards and Labeling Division, Compliance Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments must be sent in duplicate to the Executive Secretariat and should bear a reference to the date and page number of this issue of the Federal Register. Any person desiring opportunity for oral presentation of views concerning the proposed amendments to the poultry products inspection regulations must make such request to Mr. Fried so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. All comments submitted pursuant to this proposal will be made available for public inspection in the office of the Executive Secretariat during regular hours of business.

Background

The Food Safety and Quality Service (FSQS) has been requested to propose regulations permitting the use of enzyme (rennet) treated calcium reduced dried skim milk and enzyme (rennet) treated sodium caseinate, both of which are to be mixed with calcium lactate, as a binder or extender in comminuted meat food products and poultry products. The calcium lactate is to be added at a sufficient rate to create a calcium/protein ratio which would be comparable to that which is found in skim milk.

The request to propose the use of these substances as binders or extenders states that there are distinct technological advantages associated with the use of these ingredients. The request states that the soft gel formation that is created improves texture, inhibits emulsion breakdown, retains moisture more uniformly, and increases product stability.

Approval of substances for use in the preparation of products

The proposal would expand the list of approved binders and extenders for use in certain meat and poultry products by authorizing the use of enzyme (rennet) treated calcium reduced dried skim milk and enzyme (rennet) treated sodium caseinate with calcium lactate. The proposal would permit calcium reduced dried skim milk and sodium caseinate to be treated only with the enzyme rennet.

The preparation procedure of the binders consists of treating the calcium reduced dried skim milk or the sodium caseinate solution with rennet, the

enzyme commonly used in the production of cheese. This enzyme alters the casein molecule so that it is capable of forming a gel when mixed with enough calcium to create the normal calcium to casein ratio of skim milk. This is accomplished by the addition of calcium lactate at the time of the addition of the dried emzyme treated dairy ingredient to the meat or poultry mixture. During the cooking of the meat or poultry products, a casein gel is formed by the dairy ingredient and calcium lactate. This gel acts as a binder-extender in the cooked product.

Both calcium lactate and rennet are substances generally recognized as safe (GRAS) (21 CFR 182.1207, 18.1685) by the Federal Food and Drug Administration when used in accordance with good manufacturing practices. The use of the products as proposed herein would be consistent with the GRAS status of calcium lactate and rennet. The enzyme (rennet) treatment of calcium reduced dried skim milk and sodium caseinate should not alter the nutritional characteristics of these products which are now being widely used and are accepted as safe.

The mixture of enzyme (rennet) treated products and calcium lactate would be very similar to dried skim milk nutritionally in terms of protein and calcium content, and would perform the same function in products in which it is to be used.

The amount of calcium lactate that would be combined with calcium reduced dried skim milk would be required at a rate of 10 percent of the binder. This would be the proportion that would be necessary to restore the ratio of calcium to casein found in milk. The amount of calcium lactate that would be combined with sodium caseinate would be required at a rate of 25 percent of the binder. This would be the proportion that would be necessary to restore the ratio of calcium to casein found in milk. This ratio would be required at a rate of 25 percent because sodium caseinate contains a higher percentage of casein that calcium reduced dried skim milk and, therefore, more calcium would be necessary to restore the natural balance of the product.

Restrictions on the use of these substances in the preparation of products

This proposal would not extend the uses of binders-extenders in products.

The use of these binders and extenders would be subject to the same limitations presently applied to dried skim milk, calcium reduced dried skim milk, and sodium caseinate.

The amount of enzyme treated calcium reduced dried skim milk and enzyme treated sodium caseinate to be used to bind and extend products, other than sausages, would be limited to an amount sufficient for the purpose as presently provided in §§ 318.7 and 381.147 of the regulations (9 CFR 318.7 and 381.147).

In conformity with this proposal, the Administrator also proposes to amend the standards for sausage products to permit only the use of enzyme (rennet) treated calcium reduced dried skim milk. Enzyme treated sodium caseinate is not being proposed for use in these specific sausage products since, unlike enzyme treated calcium reduced dried skim milk, its presence in such products cannot currently be quantified and measured. The amount of enzyme (rennet) treated calcium reduced dried skim milk which would be permitted for use in standard sausage would be limited to 3½ percent of the total finished product as presently permitted for binders and extenders for use in these products in § 319.140 of the Federal meat inspection regulations (9 CFR 319.140).

Accordingly, it is proposed to amend the Federal meat inspection regulations as follows:

§ 318.7 [Amended]

1. In § 318.7(c)(4) (9 CFR 318.7(c)(4)), the portion of the chart dealing with the "Class of substance" identified as "Binders" would be amended by adding the following substances to the appropriate columns in alphabetical order as follows:

Class of substance	Substance	Purpose	Product	Amount
*	*	*	*	*
Binders	Enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate.	To bind and extend product	Sausages, as provided for in Part 319 of this subchapter.	3½ percent total finished product. (Calcium lactate required at rate of 10 percent of binder.)
			Imitation sausages; nonspecific loaves; soups; stews.	Sufficient for purpose. (Calcium lactate required at rate of 10 percent of binder.)
	Enzyme (rennet) treated sodium caseinate and calcium lactate.	do	Imitation sausages; nonspecific loaves; soups; stews.	Sufficient for purpose. (Calcium lactate required at rate of 25 percent of binder.)
*	*	*	*	*

§ 319.140 [Amended]

2. The second sentence of § 319.140 (9 CFR 319.140) would be amended by deleting "calcium reduced skim milk or dried milk" and by adding the following in lieu thereof: "calcium reduced dried skim milk, enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate, or dried milk."

§ 319.180 [Amended]

3. Section 319.180(e) (9 CFR 319.180(e)) would be amended by inserting the following after the words "calcium reduced dried skim milk": "enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate,".

§ 319.181 [Amended]

4. The second sentence of § 319.181 (9 CFR 319.181) would be amended by deleting "calcium reduced skim milk, or dried milk" and by adding the following in lieu thereof: "calcium reduced dried skim milk, enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate, or dried milk."

§ 319.281 [Amended]

5. Section 319.281(a)(2) (9 CFR 319.281(a)(2)) would be amended by inserting the following after the words "calcium reduced dried skim milk,": "enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate,".

(Sec. 7, 21, 34 Stat. 1262, as amended, 21 U.S.C. 607, 621; 42 FR 35625, 35626, 35631.)

Accordingly, it is proposed to amend the Federal poultry products inspection regulations as follows:

§ 381.147 [Amended]

In § 381.147(f)(3) of the poultry products inspection regulations (9 CFR 381.147(f)(3)), the portion of the chart dealing with the "Class of substance" identified as "Binders and extenders" would be amended by adding the following substances to the appropriate columns in alphabetical order as follows:

Class of substance	Substance	Purpose	Product	Amount
*	*	*	*	*
Binders and extenders	Enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate.	To bind and extend product	Various	Sufficient for purpose. (Calcium lactate required at rate of 10 percent of binder.)
	Enzyme (rennet) treated sodium caseinate and calcium lactate.	do	do	Sufficient for purpose. (Calcium lactate required at rate of 25 percent of binder.)
*	*	*	*	*

(Sec. 8, 14, 71 Stat. 444, 21 U.S.C. 457, 463; 42 FR 35625, 35626, 35631.)

Note.—This proposal has been reviewed under the USDA criteria to implement Executive Order 12044, "Improving Government Regulations," and has not been designated "significant." An approved draft Impact Analysis Statement is available from Mr. Irwin Fried, Acting Director, Meat and Poultry Standards and Labeling Division, Compliance Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Done at Washington, D.C., on: July 25, 1979.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

[FR Doc. 79-23432 Filed 7-30-79; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL RESERVE SYSTEM

[12 CFR Parts 204 and 217]

[Docket No. R-0238]

Reserve Requirements and Interest Rate Limitations on Deposits for U.S. Branches and Agencies of Foreign Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rulemaking.

SUMMARY: The International Banking Act of 1978 imposes Federal Reserve requirements and deposit rate limitations on Federal branches and agencies and authorizes the Board to impose such requirements on State-licensed United States branches and agencies of foreign banks whose foreign parents have worldwide assets of $1 billion or more. The Act also grants such branches and agencies access to Federal Reserve discount, clearing, and settlement facilities to the same extent as member banks, subject to regulations promulgated by the Board. In order to implement the provisions of the International Banking Act, the Board proposes to amend Regulation D (Reserves of Member Banks) and Regulation Q (Interest on Deposits) to make branches and agencies subject to the reserve requirements and interest rate ceilings currently applicable to member banks.

DATE: Comments must be received by September 21, 1979.

ADDRESS: Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All material submitted should include the Docket Number R-0238.

FOR FURTHER INFORMATION, CONTACT: C. Keefe Hurley, Jr., Senior Attorney (202/452-3269) or Anthony F. Cole, Senior Attorney (202/452-3711), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Section 7(a) of the International Banking Act of 1978 (IBA) (92 Stat. 607) requires the Board to impose reserve requirements and deposit interest rate limitations on Federally-licensed United States branches and agencies of foreign banks ("branches and agencies") whose foreign parents have worldwide assets of $1 billion or more. The IBA also authorizes the Board, after consultation and in cooperation with the State bank supervisory authorities, to apply any reserve requirements and deposit interest rate limitations made applicable to Federal branches and agencies to any State-licensed branch or agency whose foreign parent has worldwide assets of $1 billion or more. In this regard, the Board staff undertook extensive consultations with each of the State bank supervisory authorities that have responsibility for State-licensed branches or agencies of foreign banks and on March 16, 1979, as required by the IBA, the Board submitted a report to Congress concerning the steps taken to consult with the State bank supervisory authorities. A copy of this report is available from the Board's Office of Public Affairs (202/452-3215).

Under the IBA, the purposes of reserve requirements and interest rate limitations on branches and agencies are to facilitate the implementation of monetary policy and to promote competitive equity among depository institutions. The Board's proposals to implement the provisions of the IBA will facilitate the conduct of monetary policy and will promote vigorous and fair competition between branches and agencies and member banks by treating branches and agencies like member banks to the fullest extent possible. Accordingly, the Board of Governors proposes to amend its regulations concerning reserves of member banks (Regulation D; 12 CFR Part 204) and interest on deposits (Regulation Q; 12 CFR Part 217) to subject deposits, including credit balances, of United States branches and agencies of foreign banks to the reserve requirements and interest rate ceilings currently applicable to member banks. Several provisions of Regulation D, however, would be modified to reflect operational and structural differences between member banks and branches and agencies.

Regulation Q

Regulation Q (12 CFR Part 217) prescribes rules governing the payment and advertisement of interest on deposits, including limitations on the rates of interest which may be paid by member banks on time and savings deposits. Regulation Q also includes provisions that prohibit the payment of interest on deposits that are payable on demand or that have a maturity of less than 30 days, specify the terms and

conditions under which member banks may pay savings and time deposits before maturity, and prescribe rules governing the advertisement of interest paid on deposits. The Board proposes to apply all the provisions of Regulation Q to branches and agencies.

Regulation D

Regulation D (12 CFR Part 204) presents the Board's regulatory structure for implementation of reserve requirements on, and maintenance of reserves by member banks. The regulation specifies the liabilities that are regarded as deposits subject to reserves. The procedures for computing and maintaining required reserves including penalties for deficiencies also are presented.

Under Regulation D, a member bank is required to maintain reserve balances in an amount sufficient to satisfy its reserve requirements as specified in the Regulation. Reserve balances consist of U.S. currency and coin as defined in § 204.1 of the Regulation and the balances maintained with the Federal Reserve. Required reserves are computed on the basis of the member bank's daily net deposit balances during a seven day period ending each Wednesday (the "computation period"). Required reserve balances must be maintained at a Federal Reserve Bank during a corresponding weekly period (the "maintenance period") which begins the second Thursday following the end of the computation period. However, in determining whether a sufficient reserve balance has been maintained, the average daily U.S. currency and coin held during the computation period is added to the average daily balance maintained by the member bank in its reserve account with the Federal Reserve during the maintenance week. Current Federal reserve requirements are listed in the table that follows.

Federal Reserve Requirements

Type of deposit and deposit interval in millions of dollars	Requirements (per cent) in effect July 18, 1979
Net demand	
0–2	7
Over 2–10	9½
Over 10–100	11¾
Over 100–400	12¾
Over 400	16¼
Savings	
*Time**—By initial maturity	3
30–179 days	
–0–5	3
–over 5	6
180 days to 4 years	2½
4 years or more	1
Eurodollar borrowings	0

*A supplementary reserve requirement of 2 per cent applies to time deposits of $100,000 or more.

The Board proposes to apply all the provisions of Regulation D to branches and agencies. The Board recognizes, however, that branches and agencies differ from member banks in some respects. Consequently, comment is requested on whether there are any significant differences between branches and agencies and member banks in the way in which deposits and credit balances are maintained and utilized. Public comment also is requested by September 21, 1979, on the following proposed actions:

Credit balances

The Board proposes to apply Regulation Q interest rate provisions and Regulation D reserve requirements to deposits of branches and agencies and credit balances of agencies in a manner similar to their application to member banks. Under most State laws, agencies cannot accept deposits. However, agencies can maintain credit balances for their customers in connection with the exercise of their other lawful banking powers. Credit balances issued by agencies are like deposits in that they are liabilities of the foreign agency to its customers. If an account such as a credit balance were maintained at a member bank, it would give rise to a reservable deposit. In view of the parallels between credit balances and reservable deposit liabilities, the Board believes that credit balances of agencies should be regarded as deposits subject to interest rate ceilings and reserve requirements.

Under the proposal, for the purpose of reserve requirements and interest rate limitations, credit balances would be defined as "deposits" so that the maturity of such balances would determine the reserve ratios and interest rate ceilings applicable to such balances just as it now does for deposits at member banks. Credit balances with a minimum maturity of 30 days or more would be subject to time deposit reserve ratios, while those with a shorter maturity would be treated as demand deposits. Under this approach, the prohibition of payment of interest on demand deposits would be applied to that portion of a credit balance available on demand. Credit balances with a maturity of 30 days or more would be subject to applicable time deposit interest rate ceilings under Regulation Q.

To aid the Board in its consideration of the treatment of credit balances as deposits, public comment is requested on customary practices with regard to credit balances. Specific comment is requested on:

(1) The extent to which checks or drafts are, or may be, drawn by customers on credit balances (a) for payment of liabilities owed by customers to third parties and (b) for transfers to customers' commercial bank accounts;
(2) The extent to which credit balances are currently treated as available on demand or as subject to a notice or maturity requirement; and
(3) The extent to which agencies are permitted to pay interest on credit balances under State law and whether, in fact, interest is paid on such balances and at what rates.

Public comment also requested on the following:

(1) Whether credit balances should be viewed as demand deposits, time deposits, or a special category of deposit for purposes of Regulations D and Q; and
(2) The effect of prohibiting the payment of interest on credit balances (or those portions of credit balances) with maturities of less than 30 days.

Officers' checks

Section 204.1(g) of Regulation D (12 CFR 204.1(g)) defines officers' checks as a component of gross demand deposits; thus, officers' or certified checks issued by member banks are reservable at the demand deposit ratio. Branches and agencies of foreign banks issue significant amounts of officers' checks. Since there does not appear to be any difference in the nature or function of an officer's check issued by a domestic bank and one issued by a branch or agency of a foreign bank, the Board proposes to treat such checks identically for these institutions. Thus, officers' checks issued by branches and agencies, including those drawn as agent for the foreign parent or any other affiliate or entity, would be treated as demand deposits for reserve requirements purposes. Such classification is appropriate since branches and agencies would enjoy a competitive advantage over member banks if officers' checks were not reservable on the same terms.

Branches and agencies would be required to conform their accounting practices with respect to officers' checks to those required of member banks under Regulation D. Such action would necessitate the modification by branches and agencies of certain operating and accounting practices involving officers' checks that are inconsistent with member bank treatment of such checks. The first practice requiring modification involves officers' checks drawn as agent for the foreign parent, affiliate, or other entity. Such checks often are not reflected as a

liability of the branch or agency. Instead, a nondeposit liability account reflecting the branch's obligation is written down to offset the reduction on the branch's books in balances due from domestic correspondent banks that occurs when the checks are presented for payment. Under such accounting practice, such transactions would generate no liabilities subject to reserve requirements even though there is no practical distinction between such a transaction and a transfer of demand deposits using officers' checks, which does generate reservable liabilities.

Prior to 1969, a number of member banks engaged in a similar practice. The Board, however, amended Regulation D to require member banks to include in gross demand deposits checks "drawn by or on behalf of a foreign branch of a mmember bank" (12 CFR 204.1(g)). Application of Regulation D to branches and agencies of foreign banks would require them to include in gross demand deposits checks drawn by or on behalf of the foreign parent of affiliate.

A second practice of branches and agencies that is not comparable to that of member banks involves the accounting by some branches and agencies for officers' checks by writing down a customer account and a due from correspondent bank account simultaneously when the officer's check is issued. When a member bank, however, issues an officer's check, the customer's liability account is written down and offset by an increase in officers' checks outstanding. Therefore, the officer's check is included in reservable liabilities until the check clears. Application of Regulation D to branches and agencies would require them to adopt the same procedure for accounting for such officers' checks.

Eurodollar borrowings

Since 1969, deposits in the form of borrowings by domestic offices of member banks from foreign banks, foreign governments, international organizations, and the bank's own foreign branches have been subject to reserve requirements under § 204.5(c) of Regulation D (12 CFR 204.5(c)). The applicable reserve ratio has been as high as 20 per cent, but has been set at zero since August 24, 1978. Should the applicable reserve ration increase in the future, United States branches and agencies of foreign banks could have a cost of funds advantage relative to member banks. To provide comparable treatment with member banks, the Board proposes to subject Eurodollar borrowings of branches and agencies from both related and unaffiliated foreign banking institutions to the same reserve ratio that applies to similar borrowings by member banks under Regulation D.

Much of the funding for branches and agencies is provided by advances from their foreign parents. Since branches and agencies are part of their foreign parents' corporate entities, they have no separate capital account in the domestic banking sense. However, a portion of advances or borrowings from the parent organization serve purposes similar to that of the equity capital of domestic banks; such capital of domestic banks is not subject to reserve requirements. Consequently, the Board proposes to exempt from reserve requirements that portion of advances from the foreign bank parent (including other foreign offices) that equals 8 per cent of certain assets of a branch or agency. The assets proposed would be total branch and agency assets less cash, due from unrelated banks, and due from related institutions. This capital-equivalency allowance should contribute both to competitive equity and to the safety and soundness of foreign banking offices in the United States. The Board requests public comment on the appropriateness of this proposal and on other asset concepts that might be used.

All funding obtained by a member bank by borrowing from a foreign banking institution, whether related or not, is subject to the Eurodollar reserve requirement (§ 204.5(c) and (d) of Regulation D; 12 CFR 204.5(c), (d)). Net borrowings from the parent by the branch or agency, except to the extent of the 8 per cent allowance described above, would be reservable at the Eurodollar rate even where the funds borrowed represent the proceeds of commercial paper issued in the United States by the parent. Funds raised in the United States by a branch or agency directly, however, would be subject to domestic reserve requirements unless in a form specifically exempted by Regulation D, such as interbank borrowings and repurchase agreements on United States government or agency securities.

As an alternative, when a parent is issuing commercial paper at the same time it is lending funds to its U.S. branches or agencies, it could be presumed that the proceeds of the sale are being used to supply funds to the branches or agencies. Under this approach, the commercial paper issued by the parent would be treated as a deposit subject to domestic reserve requirements to the extent of advances to the branches or agencies by the parent, less the 8 per cent capital equivalency allowance.

To aid the Board in its consideration of the treatment of commercial paper, public comment is requested on these alternatives.

Asset Sales

A domestic bank can fund its operations from deposits or borrowings in the money markets or from affiliates; alternatively, in order to obtain funds, it can transfer a portion of its assets to a foreign branch or affiliate. In each case, the domestic bank obtains additional funds to lend in its domestic business. Funds obtained by a member bank from the sale of domestic assets, such as loans, to a foreign banking affiliate are subject to Eurodollar reserve requirements (§ 204.5(d) of Regulation D; 12 CFR 204.5(d)). Sales of assets to nonbank affiliates are subject to domestic reserve requirements (§§ 204.1 and 204.5 of Regulation D; 12 CFR Part 204.1, 204.5). The Board proposes to subject the proceeds of the sale of any domestic asset by branches and agencies to their foreign parent or affiliated banking institutions to the Eurodollar reserve requirements. However, domestic assets that for Federal supervisory purposes are required to be sold will not be subject to Eurodollar reserve requirements.

Reserve maintenance and accounting

Under section 5(b) of the IBA, a foreign bank that operates or has applied for branches and agencies in more than one State on July 27, 1978, is permitted to retain those offices. In contrast, member banks generally are not permitted to operate branches interstate. Interstate operations by "families" of branches and agencies raise three reserve requirement issues: (1) the definition of "family" for purposes of reserve requirement calculations; (2) the extent to which the net deposits of a foreign bank family should be consolidated or aggregated for purposes of calculating the family's reserve requirement; and (3) the number of reserve accounts that a family should be permitted to maintain.

Definition of "family." In order to provide parallel treatment between branches and agencies and member banks under the system of graduated reserve requirements, the Board intends to impose reserve requirements on families of branches and agencies. For purposes of reserve requirements only, the Board proposes to define "family" to include only United States branches and agencies of a single foreign parent bank and of its foreign banking subsidiaries.

(The same definition may not be used for other purposes.) Under this definition, the United States branches and agencies of a single foreign bank would constitute a separate family. For example, if a foreign company owned two banks each having branches and agencies in the United States, the branches and agencies would form two separate families, one related to each of the foreign banks. This treatment parallels the current treatment of banks owned by domestic multi-bank holding companies. Subsidiary banks chartered in the United States would always be excluded from the family. However, a foreign bank's foreign subsidiaries operating branches or agencies in the United States would be considered part of the same family as the branches and agencies of the owning foreign bank. If a foreign bank established an Edge Corporation, as permitted for the first time by the IBA, the Edge Corporation would not be consolidated with the agencies and branches of the foreign parent bank. This treatment parallels the treatment of Edge Corporations owned by domestic banks. At present, Edge Corporations owned by domestic banks are not consolidated with each other or with their parent for rserve calculation purposes.

Aggregation. In order to assure competitive equity with member banks under the system of graduated reserve requirements, the Board proposes to require that deposits at all branches and agencies in the same family be aggregated nationally for purposes of calculating reserve requirements. Under this approach, one of the offices of a branch and agency family would be designated the "Administrative Office" for its sister organizations. This office would be responsible for nationally consolidating the family's Report of Deposits, would maintain with its Reserve Bank the marginal reserves for the family resulting from graduated reserve requirements, and would bear the responsibility for penalties that may be imposed for reserve deficiencies in that reserve account.

The Congressional policy expressed in the IBA of establishing competitive equality between domestic and foreign banks in like circumstances supports the concept of aggregation or consolidation for reserve calculation purposes of deposits of all units of a foreign bank family operating in the United States. Since required reserve ratios increase with deposit size, the marginal reserve requirement on the aggregated deposits of a family of branches and agencies generally will exceed the marginal reserve requirement of any single office. Hence, the cost of funds usually will be higher to a bank that must meet a reserve requirement on its aggregated net deposits at all branches than on the net deposits at each branch separately. Domestic money-center banks, with which branches and agencies primarily compete, must aggregate all of their domestic branch deposits for reserve calculation purposes. Thus, the cost of funds will be more nearly equal between domestic banks and branches and agencies if the latter aggregate their deposits for reserve calculation purposes.

Under national aggregation, branches and agencies would be permitted to deduct balances due from domestic banks, as well as from other nonaffiliated branches and agencies, and cash items in the process of collection in calculating net demand deposits subject to reserve requirements. For this purpose, demand deposits of member banks due from United States branches of foreign banks would be treated identically to demand deposits due from domestic banks. Similarly, credit balances held by member banks or other branches and agencies at United States agencies of foreign banks would be eligible for the due from deduction to the extent that those balances are treated as demand deposits for reserve purposes (as discussed previously, credit balances with a minimum maturity of less than 30 days would be treated as demand deposits). Intra-family balances would not be included in calculating reserve requirements since such balances net to zero for the family as a whole. This procedure parallels the current handling of inter-branch borrowing and lending by branches of domestic banks.

Number of reserve accounts. The Board proposes to permit families of branches and agencies to maintain one reserve account (and to make use of Reserve Bank services) with each Reserve Bank or branch in whose zone the family operates. Each Reserve Bank would administer the reserve accounts of the branches and agencies operating in its district under the same rules that apply to member banks. Thus, at the local level, the Federal Reserve will require a separate Report of Deposits that consolidates the deposits of the branches and agencies for each State in which branches and agencies of the family operate. At the option of the foreign bank family, the reserves required against deposits of any branch or agency could be held in the account of the Administrative Office of the foreign bank family. However, no Reserve Bank services would be available locally to a branch or agency not having an account at its local Reserve Bank office. Penalties for deficiencies in the reserve accounts used by each branch or agency would be assessed by each Reserve Bank, although the Administrative Office would be responsible for penalties for deficiencies in the reserve account it is required to maintain.

Access to Federal Reserve services

Under the IBA, Congress intended foreign banks maintaining Federal reserves to have access to Federal Reserve Bank services on a comparable basis and to the same extent as those services are available to member banks. Accordingly, the Board proposes to make Federal Reserve services, including check collection, currency and coin, securities safekeeping and wire transfer services, available to branches and agencies as soon as the proposed regulations become effective. In order to obtain such services locally, a branch or agency would be required to have an account with its local Reserve Bank office. During the phase-in period described below, branches and agencies may be required to maintain a level of clearing balances consistent with the level of services being provided.

Access to discount window

The Board proposes to permit any branch or agency maintaining a reserve balance with a local Reserve Bank to be eligible for advances or discounts from that Reserve Bank. The appropriateness of borrowing by any branch or agency would be based on the needs of the family members located in the district where the reserve account is maintained and would be subject to guidelines to be adopted by the Board. The Board intends to monitor activities of foreign bank families on a consolidated basis to identify certain systematic borrowing patterns that could be regarded as excessive use of the discount window.

Implementation of reserve requirements

The Board recognizes that substantial revisions in the accounting procedures of branches and agencies may be necessitated by the proposals. Accordingly, comment specifically is requested on the amount of lead time that would be required to make these necessary changes in an orderly manner. Under the Board's proposals, branches and agencies would be required to report data necessary for the administration of reserve requirements. In this connection, it is anticipated that such reporting would include data for the categories listed in the following

table and that data for these categories would be maintained on a daily basis and filed with the local Federal Reserve Bank once each week. The proposed data and filing requirements would be similar to those required for member banks.

Present Board policy permits nonmember banks that become member banks to assume their reserve requirements gradually by authorizing the Reserve Banks to waive penalties for deficiencies in "transitional reserve requirements" on a graduated basis over a two-year period. The Board proposes to phase-in the reserve requirements provided for in these proposals over the two-year period now allowed to nonmember banks joining the System.

Reporting Categories for Reserve Requirement Purposes*

1. Demand deposits due to banks.
2. Demand deposits due to the U.S. Government.
3. Other Demand deposits (including officers' checks).
4. Demand deposits due from banks.
5. Cash items in process of collection.
6. Savings deposits.
7. Time deposits with original maturities of 30 to 179 days.
8. Time deposits with original maturities of 180 days but less than 4 years.
9. Time deposits with original maturities of 4 years or more.
10. U.S. currency and coin held in vaults.
11. Time deposits of $100,000 or more.
12. Borrowings from non-related foreign banks, foreign national governments, and international institutions.
13. Gross claims on the foreign parent bank and related affiliates located outside the States of the United States and the District of Columbia.
14. Gross liabilities to the foreign parent bank and related affiliates located outside the States of the United States and the District of Columbia.
15. Assets sold by the branch or agency to the foreign parent bank and other banking affiliates located outside the States of the United States and the District of Columbia.
16. Assets sold by the branch or agency to other nonbanking affiliates.
17. Funds received from the sale of ineligible bankers acceptances that have remaining maturities of less than 30 days.
18. Funds received from the sale of ineligible bankers acceptances that have remaining maturities of 30 days or more but less than 180 days.
19. Funds received from the sale of ineligible bankers acceptances that have remaining maturities of 180 days or more but less than 4 years.
20. Funds received from the sale of ineligible bankers acceptances that have remaining maturities of 4 years or more.
21. Total assets other than cash and due from unrelated banks and due from related institutions, as defined for the Report of Condition.

*"Deposits" includes credit balances of similar maturity at agencies.

In order to achieve national treatment in the implementation of reserve requirements and discount borrowing privileges for U.S. branches and agencies of foreign banks, the Board proposes generally to treat individual members of a foreign bank family comparably to domestic member banks. However, the Board recognizes that the foreign bank family is part of a single managerial entity. Where competitive balance may be affected by coordinated interstate operations of the foreign bank family, the Board's proposals take into account the fact that individual branches and agencies are members of a family. Thus, for example, the Board proposes to aggregate deposits nationally for reserve computation purposes although family members in each Federal Reserve zone would be entitled to an account at the local Federal Reserve office. A further example is the Board's proposal that the appropriateness of discount window borrowing be based upon local needs of family members, with overall monitoring of borrowing by the family being coordinated at the national level.

The Board would like to receive comments from the public on this general approach to dealing with the new institutional structure posed by interstate operations of branches and agencies. Should the Federal Reserve maintain a relationship through a single office with the family as if it were a single bank, not taking account of the fact that the family may have offices located throughout the country? Alternatively, should the Board treat each office of the family as an independent bank? Should some general approach other than that proposed by the Board be followed to take into account the interstate banking operations of foreign banks?

All comments and information on the above proposals should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received by September 21, 1979. All material submitted should include the Docket Number R-0238. Such material will be made available for inspection and copying upon request except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR Part 261.6(a)).

Pursuant to authority under the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*) and section 19 of the Federal Reserve Act (12 U.S.C. 371a, 371b, 461 *et seq.*), the Board proposes to amend Regulation D (12 CFR Part 204) and Regulation Q (12 CFR Part 217) as follows:

§ 204.0 Scope of part.

(a) This regulation is issued under authority of provisions of § 19 of the Federal Reserve Act (12 U.S.C. 461 *et seq.*) and of the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*).

(b) This Part relates to the computation and maintenance of reserves that member banks are required to maintain against deposits. United States branches and agencies of foreign banks with worldwide assets of $1 billion or more are required to comply with the provisions of this Part in the same manner as if the branches and agencies were member banks. Several provisions, however, have been modified to reflect operational and structural differences between member banks and branches and agencies.

(c) The provisions of this Part do not apply to any deposit that is payable only at an office located outside the States of the United States and the District of Columbia.

§ 204.1 Definitions.

* * * * *

(b) * * * "Time deposits" do not include time deposits of a United States branch or agency deposited to the credit of another United States branch or agency of the same "family," as provided in § 204.3(e).

* * * * *

(g) *Gross demand deposits.* * * * "Gross demand deposits" also includes officers' checks issued by a United States branch or agency of a foreign bank, including checks drawn as agent for its foreign parent bank, affiliates, or others. "Gross demand deposits" do not include demand deposits of a United States branch or agency deposited to the credit of another United States branch or agency of the same "family," as provided in § 204.3(e).

* * * * *

(k) *Credit balances.* For purposes of this Part, the term "deposits" also includes the credit balances of a United States agency of a foreign bank.

§ 204.2 Computation of reserves.

* * * * *

(b) *Deductions allowed in computing reserves.* In determining the reserve balances required under the terms of this Part, member banks may deduct from the amount of their gross demand deposits the amounts of balances subject to immediate withdrawal due from other banks, including amounts due from unrelated United States

branches and agencies of foreign banks, and cash items in process of collection as defined in § 204.1(h). Balances "due from other banks" do not include balances due from Federal Reserve Banks or balances (payable in dollars or otherwise) due from other banking offices located outside the States of the United States and the District of Columbia.[10]

* * * * *

§ 204.3 Deficiencies in reserves.

* * * * *

(e) *United States branches and agencies of foreign banks.* An Administrative Office shall be designated by the United States branches and agencies that constitute a "family." A "family" shall consist of all the United States branches and agencies of a single foreign parent bank, including United States branches and agencies of a foreign subsidiary of the foreign parent bank. The Administrative Office shall be responsible for preparing and filing a consolidated Report of Deposits for the family, for maintaining with the Federal Reserve Bank of its District any additional reserves that may be required as a result of aggregating the deposits of the United States branches and agencies of the family, and for penalties that may be assessed for deficiencies in that required reserve balance.

§ 204.5 Reserve requirements.

(a) *Reserve percentage.* * * * In determining the net demand deposits of United States branches and agencies of foreign banks against which reserve balances are required to be maintained, the net demand deposits of all United States branches and agencies constituting a family as provided in § 204.3(e) shall be aggregated.

* * * * *

(d) *Foreign branch transactions with parent bank.* * * * During each reserve maintenance week, United States branches or agencies constituting a family as provided in § 204.3(e) shall maintain a reserve against their deposits equal to a daily average balance of 0 percent of the daily average total of—

(i) Net balances due to their foreign parent bank (including branches and agencies located outside the States of the United States and the District of Columbia), after deducting an amount equal to 8 percent of the United States branches' and agencies' total assets (not including cash or other assets due from their foreign parent bank or related institutions or unrelated banks), and

(ii) Assets (including participations) held by the foreign parent bank (including branches and agencies located outside the States of the United States and the District of Columbia) and other banking affiliates which were acquired from its related United States branches and agencies (other than assets representing credit extended to persons not resident of the United States or assets required to be sold by the federal supervisory authority of the branch or agency), during the computation week ending 15 days before the beginnng of the maintenance period. Reserves that may be required against assets sold to nonbanking affiliates under § 204.1(f) of this section shall be maintained in accordance with § 204.5(a) of this section.

* * * * *

§ 217.0 Scope of part.

* * * * *

(d) Under authority of the provisions of the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*), the provisions of this Part apply to federal and state branches and agencies of foreign banks with total worthwide consolidated assets of $1 billion or more.

§ 217.1 Definitions.

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(h) *Credit balances.* For purposes of this Part, the term "deposits" also includes any liability on credit balances of a United States agency of a foreign bank.

* * * * *

By order of the Board of Governors, July 18, 1979.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 79-23531 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release Nos. 34-16045; File No. 4-210]

Request for Comments on Petition Concerning Disclosure of Relationships Between Attorneys and Registrants

AGENCY: Securities and Exchange Commission.

ACTION: Request for written comments.

SUMMARY: The Securities and Exchange Commission is requesting written comments on disclosure rules which the Institute for Public Representation petitioned the Commission to adopt. The petitioner's proposals would require disclosure of certain information concerning the relationships between registered issuers and their counsel, as well as disclosure about resignations or dismissals of an issuer's legal counsel. In publishing these rule proposals for comment, the Commission takes no position with respect to the proposals. The Commission is also specifically requesting comments concerning its legal authority to adopt these proposals.

DATE: Comments should be received by the Commission on or before November 30, 1979.

ADDRESSES: All communications concerning this matter should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549. Such communications should refer to File No. 4-210, and will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Richard B. Nesson, G. Michael Stakias or Gregory H. Mathews, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549 (202-755-1750).

SUPPLEMENTARY INFORMATION: On May 25, 1978, the Commission received a rulemaking petition and supporting memorandum from the Institute for Public Representation, a public interest law firm affiliated with the Georgetown University Law Center.[1] The petition sought an amendment to Rule 2(e) of the Commission's Rules of Practice [2] which would define the responsibilities of atttorneys who, during the course of their representation, receive information clearly establishing that clients or others have committed violations of the federal securities laws. On November 22, 1978, the Institute submitted a supplemental petition clarifying the initial petition and further petitioning the Commission to promulgate rules requiring disclosure of certain aspects of the relationship between counsel and Commission registrants.[3]

With respect to the initial petition, the Commission's Secretary has today transmitted a letter to the Institute setting forth the bases upon which the Commission has determined to deny the

[1] The petition was submitted pursuant to the Administrative Procedure Act, 5 U.S.C. 553(e), and to Rule 4(a) of the Commission's Rules of Practice, 17 CFR 201.4(a).

[2] Rule 2(e) [17 CFR 201.2(e)] sets forth the bases upon which the Commission may deny, temporarily or permanently, certain professionals the privilege of appearing or practicing before it.

[3] These petitions are available for public inspection at the Commission's Public Reference Room. Request File No. 4-210.

petitioner's request.[4] The Commission has, however, determined to publish the Institute's disclosure proposals. In so doing, and unlike a normal rulemaking proceeding, the Commission takes no position, tentative or otherwise, with respect to the proposals.[5]

I. Disclosure Rules Proposed by the Institute

The supplemental Petition requests that the Commission promulgate the following three rule proposals:

1. Every corporation required to file reports with the Securities and Exchange Commission ("reporting corporation") shall include in its Form 10-K and in its annual report to shareholders a certificate stating that:

(A) Its board of directors has instructed each attorney employed or retained by the corporation to report promptly to the board, either directly or through the audit committee or some other committee of the board with a similar ratio of independent directors, any corporate activities discovered by the attorney through reasonable diligence during the course of representation which, in the attorney's opinion, violate or probably violate any law administered or enforced by the SEC or any other law, where such violations or probable violations:

(i) Could result in material financial liability for the corporation;

(ii) Call into question the quality and integrity of management in connection with corporate activity; or

(iii) Are part of a pattern or practice of recurring activity;

(B) All attorneys have indicated their compliance with the board's instructions either by reporting such violations or probable violations, or by reporting, at least annually, that no such violations or probable violations have come to their attention;

(C) The full board of directors has considered each attorney's report and has taken all actions determined to be appropriate;

(D) Information regarding such violations or probable violations has been conveyed to the independent auditors if, in the opinion of the board, the violations or probable violations are material.

2. Every reporting corporation shall file with the Commission copies of written agreements delineating the relationship between the corporation and its outside attorneys. Such agreements may cover any aspect of the relationship which, in the opinion of the corporation might be of concern to stockholders and other investors, and, in any case, shall include:

(A) The frequency and nature of counsel's contacts with the corporation's board of directors, general counsel, independent auditor, and chief executive officer; and

(B) Obligations of counsel with regard to corporate conduct which counsel considers illegal or probably illegal.

3. When a reporting corporation's general counsel or any attorney retained in connection with matters pertaining to the laws administered or enforced by the Commission resigns or is dismissed, the corporation shall file with the Commission Form 8-K, describing the circumstances of the resignation or dismissal. Prior to submission of the Form 8-K to the Commission the corporation shall provide the resigning or dismissed attorney with an opportunity to comment on the accuracy and completeness of the description. The attorney's comments shall become part of the corporation's submission to the Commission.

II. Request for Written Comments

The Commission invites all interested members of the public, including issuers, attorneys, investors and members of the academic community and the organized bar to submit comments with respect to the need for, or desirability of, adopting the disclosure rules which the Institute has proposed. Where commentators believe that the rules would be desirable, any recommended alterations in the language proposed by the Institute should also be brought to the Commission's attention. The Commission also specifically requests commentators to address the issue of the Commission's legal authority to adopt these proposals.

The Commission is mindful of the cost to registrants and others of compliance with its rules and recognizes its responsibilities to weigh with care the costs and benefits which result from its rules. Accordingly, the Commission specifically invites comments on the costs to registrants and others of compliance with the Institute's proposed rules.

Section 23(a) of the Securities Exchange Act requires the Commission to consider the impact which any proposed rules would have on competition. While the Commission is not aware of any competitive impact likely to result from the proposals described in this release, commentators are invited to address that issue.

Written statements must be received on or before November 30, 1979 and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549. Such communications should refer to File No. 4-210 and will be available for public inspection.

By the Commission (Chairman Williams, Commissioners Loomis, Evans and Pollack).

* * * * *

Separate Statement of Views by Commissioner Karmel:

The right to petition the government is so important that it is protected by the First Amendment to the Constitution. This right is implemented by the Administrative Procedure Act,[6] which requires a reasonable consideration by the Commission of a petition for rule-making. The Commission is not required, however, to allow the facilities of the government to be utilized by a private organization [7] by invoking the notice and comment procedures associated with Commission initiated rule-making.

I do not believe the Commission should publish and request comment on any rule proposal unless the Commission determines that (1) the rule is plausibly within the Commission's statutory authority; (2) the rule probably would be an appropriate implementation of the securities laws; and (3) publication of the rule is timely in terms of the Commission's overall regulatory agenda. I do not understand the majority of the Commission to have made such findings. Indeed, the release states that the Commission takes no position, tentative or otherwise, with respect to the proposals of the Institute for Public Representation (the "Institute") which are being published, and that only after it has the benefit of public comment can the Commission more fruitfully address the above issues. Under such reasoning, it seems to me that virtually every rule making petition received would have to be published for comment.

I believe that Congress has not given the Commission any substantive authority to regulate attorneys or the practice of law in the manner contemplated by the proposals of the Institute of either May 25, 1978 or November 22, 1978.[8] In my opinion, the proposed rule would improperly impinge upon and interfere with the right to counsel, or would regulate matters which are governed by state law and not the federal securities laws. Since the Institute's proposed rules are so clearly beyond the Commission's authority to adopt, I feel no useful or proper purpose is served by putting them out for comment.

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[4] A copy of that letter is Appendix A to this release.

[5] In a separate statement of views, Commissioner Karmel indicates the standards that she believes the Commission should apply in determining whether to publish a petition for rulemaking for public comment. She concludes that the subject petition does not meet those standards. The Commission, however, believes that publishing the petition for comment will focus public consideration and discussion on an important aspect of corporate governance—a subject to which the Commission has devoted a considerable amount of attention over the past several years. And, whatever the Commission's final determination as to the proper disposition of the petition may be, the publication of these rules may increase awareness by attorneys of their responsibilities and may encourage corporate boards of directors to continue to review carefully the proper role of attorneys. As to the specific objections which Commissioner Karmel raises, the Commission believes that those points can be more fruitfully analyzed after, rather than before, it has the benefit of the public's comments.

[6] 5 U.S.C. § 553(e).

[7] Because an organization styles itself as a "public interest" group does not make it a representative of the public entitled to publicize its views at government expense.

[8] *See* my dissent In the Matter of Keating, Muething and Klekamp, Securities Exchange Act Release No. 15982 (July 2, 1979).

I do not believe that the Commission has set forth an adequate basis for determining to deny the Institute's May 25, 1978 petition and to publish for comment the Institute's November 22, 1978 petition. I do not agree with the view expressed in Appendix A to this Release that the issues raised in the Institute's May 25, 1978 petition should be addressed in *ad hoc* adjudication.[9]

If I were persuaded that the Institute's proposed rules were within the Commission's authority, and were a useful or appropriate regulatory mechanism, I would urge that these proposals be considered in the context of the work of the Commission's Task Force on Corporate Accountability in the Division of Corporation Finance. In connection with our pending tender offer rule proposals, for example, we considered rulemaking petitions and incorporated suggested rules which we considered meritorious in our own proposals.[10]

In my view, however, there are more significant and urgent matters than the Institute's proposals. Some of these other matters were the subject of extensive testimony before the Commission in the Public Hearings on Shareholder Communications, Shareholder Participation in the Corporate Electoral Process and Corporate Governance Generally.[11] The staff and public commentators should devote their attention to items of highest priority to the Commission and not be distracted by proposals formulated by private persons who do not have the responsibility for developing a comprehensive and integrated regulatory program.

* * * * *

George A. Fitzsimmons,

Secretary.

July 25, 1979.

Appendix A

Securities and Exchange Commission.
Washington, D.C., July 25, 1979.

Re Petitions, dated May 25, 1978, and November 22, 1978, requesting that the Commission engage in rulemaking.

Mr. Charles R. Halpern,
Director, Institute for Public Representation, Georgetown University Law Center, Washington, D. C.

Dear Mr. Halpern: This letter is to formally advise the Institute of the Commission's disposition of the captioned petitions. On June 5, 1979, the Commission heard oral argument on these petitions, and, on July 5, 1979, it met in open session to act upon them. At the July 5 meeting, the Commission voted unanimously to deny the May petition and, over Commissioner Karmel's dissent, to publish the November petition for public comment. Securities Exchange Act Release No. 16045, implementing the latter decision, is enclosed. As to the May petition, this letter shall constitute the statement required by 5 U.S.C. 555(e).[1]

The Institute's May petition requests that the Commission engage in rulemaking to consider certain proposed amendments to Rule 2(e) of the Commission's Rules of Practice, 17 CFR 201.2(e). Those amendments would impose a duty upon attorneys, under certain circumstances, to report fraud perpetrated by their clients during the course of their representation with respect to any law administered or enforced by the Commission, or any such fraud perpetrated by any other person. Such a proposal raises many complex issues concerning the scope and nature of attorneys' professional responsibilities. And, while the Commission recognizes the importance of these issues to the effective administration of the federal securities laws, it has concluded not to publish the May petition for public comment at the present time.

First, the Commission believes it preferable to continue to elucidate the contours of attorney responsibilities under the securities laws in particular law enforcement actions, or in disciplinary proceedings under Rule 2 (e). Since the Commission considers this to be an evolving area in which guiding principles should emerge from the facts and circumstances of particular cases,[2] it is concerned that a generic rulemaking proceeding dealing directly with counsel's responsibilities would be premature at this time and believes that it should, accordingly, await further developments.[3]

The Commission is currently involved in a number of court actions and administrative proceedings which raise issues involving the responsibilities of attorneys. In several of these pending actions and proceedings, the matters *sub judice* may require the courts and the Commission to make determinations impinging on questions raised implicitly in the May petition.[4] Accordingly, parallel consideration of these issues in the context of a rulemaking proceeding of the type proposed in the May petition would not be productive at this time.[5]

Moreover, as the Institute has pointed out, the American Bar Association's Committee on the Evaluation of professional Standards is currently drafting proposed revisions to the Code of Professional Responsibility. That effort may affect at least some of the considerations discussed by the Institute in its May petition, and the Commission does not believe that it should either duplicate the ABA's work to the extent that it bears directly on practice under the federal securities laws, or proceed without the benefit of the ABA's conclusions.

Finally, as Securities Exchange Act Release No. 16045 sets forth, the Commission has determined to publish the November petition, in full, for public notice and comment. To the extent that the goals of the Institute in submitting its two petitions were to enhance professional responsibility and to further, in a constructive way, dialogue on that topic, the publication of the November petition should substantially fulfill those purposes; the Commission does not, however, believe that the additional step of soliciting comment on the May petition would add in a meaningful way to the achievement of those goals. Moreover, the Commission believes that the May petition bears a much more attenuated relationship to the disclosure philosophy of the securities laws, and that it is, therefore, less consistent with the Commission's traditional approach to rulemaking in the area of corporate governance, the on-going review of which is still before the Commission. Accordingly, the Commission has concluded that both limited Commission resources and public and professional attention will better be utilized by focusing them solely on the Institute's November petition.[6]

* * * * *

The Commission wishes to convey its appreciation for the Institute's concern and efforts in this important area.

For the Commission.

George A. Fitzsimmons

Secretary.

[FR Doc. 79-23000 Filed 7-30-79; 8:45 am]

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[9] I note that I dissented from the legal positions taken by the Commission in *Securities and Exchange Commission* v. *National Student Marketing Corp.*, 457 F. Supp. 682 (D.D.C. 1978) and *Securities and Exchange Commission* v. *Haswell*, No. 78-1048 (10th Cir.).

Further, I have recused myself from participation *In the Matter of William R. Carter and Charles J. Johnson, Jr.*, Administrative Proceeding File No. 3-5464.

[10] Securities Exchange Act Release No. 15548 (February 5, 1979).

[11] *See* Securities Exchange Act Release No. 13482 (April 28, 1977).

[1] Although Commissioner Karmel concurs in the Commission's decision to deny the May petition, her reasons for doing so are set forth in her separate statement appended to Release No. 16045.

[2] *See Funds of Funds, Ltd.* v. *Arthur Andersen & Co.*, 567 F. 2d 225, 227 (2d Cir. 1977), *quoting United States* v. *Standard Oil Co.*, 136 F. Supp. 345, 362 (S.D.N.Y. 1955); *Brennan's Inc.* v. *Brennan's Restaurants, Inc.*, 590 F. 2d 168 (5th Cir. 1979).

[3] The Commission is, of course, free, in its discretion, to pursue either a case-by-case or rulemaking approach as it deems best under the circumstances. *Securities and Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194, 202-03 (1946); *Natural Resources Defense Council* v. *Securities Exchange Commission*, No. 77-1761 (D.C. Cir. April 20, 1978), slip. op. at 60.

[4] *See, e.g., Securities and Exchange Commission* v. *National Student Marketing Corp.*, 457 F. Supp. 682 (D.D.C. 1978), *cross-appeals pending*, Nos. 78-1051, 1052, and 1053 (D.C. Cir.); *Securities and Exchange Commission* v. *Haswell*, No. 78-1048 (10th Cir.); *In the Matter of William R. Carter and Charles J. Johnson, Jr.*, Administrative Proceeding File No. 3-5464.

[5] Although it is likely that, at any given point in time, there will be some matters pending which could conflict with a rule proceeding of the type proposed by the Institute in its May petition, the pendency, at this time, of several such matters of major importance which are likely to be decided in the near future suggests that this may be a particularly inappropriate time to publish the May proposals for comment. Decisions in these pending matters may provide significant guidance as to the scope of attorneys' responsibilities under the federal securities laws.

[6] Were the Commission to initiate a rulemaking proceeding with respect to the May petition, it would, of course, at some point have to consider the extent of its authority to adopt the proposed amendments contained in that petition. *See* Securities Exchange Act Release No. 16045. In light, however, of the reasoning set forth in this denial letter, the Commission has not found it necessary at this time to reach that issue.

RAILROAD RETIREMENT BOARD

[20 CFR Ch. II]

Semiannual Agenda of Significant Regulations

AGENCY: Railroad Retirement Board.

ACTION: Semiannual agenda of significant regulations under development or review.

SUMMARY: In accordance with Executive Order 12044, the Railroad Retirement Board hereby publishes its semiannual agenda of significant regulations under development or review.

FOR FURTHER INFORMATION CONTACT: E. E. Koch, Chief Executive Officer, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, 312–751–4930.

SUPPLEMENTARY INFORMATION: At the present time there are no significant regulations or rules under development or scheduled for development by the Railroad Retirement Board. However, as the Board stated in its report under Executive Order 12044 and in the agenda published in the Federal Register on January 31, 1979, a review and revision of existing regulations has been commenced by this agency. The parts of the present regulations under the Railroad Retirement Act which are currently being reviewed and revised are as follows:

Part 208—Eligibility for an annuity.
Part 220—Definition and creditability of service.
Part 222—Definition and creditability of compensation.
Part 225—Computation of annuity.
Part 232—Spouse's annuities.
Part 237—Insurance annuities and lump sums for survivors.
Part 238—Residual lump-sum payments.
Part 250—Reports and information to be filed by employers.

In addition, the Board has commenced review and revision of the regulations issued under the Railroad Unemployment Insurance Act. These regulations are currently codified as subchapter C of chapter II of title 20 of the Code of Federal Regulations.

Information concerning the status of the review and revision of the above-listed parts of the Board's regulations may be obtained by contacting Mr. Dale G. Zimmerman, General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone number 312–751–4935 (FTS 387–4935).

Dated: July 9, 1979.

By Authority of the Board.
R. F. Butler,
Secretary of the Board.

[FR Doc. 79–22435 Filed 7–30–79; 8:45 am]
BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 207]

[Docket No. 79N–0118]

Model Regulation Editorial Revisions

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to revise editorially the regulations for registering producers of drugs and for listing of drugs in commercial distribution. The revisions would clarify the regulations to make them more concise and readable.

DATE: Comments by October 1, 1979.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tenney P. Neprud, Jr., Regulations Policy Staff (HFC–10), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA), in the Federal Register of April 13, 1979 (44 FR 22110), announced that it was making available for public comment a draft document setting forth editorial revisions to Part 207—Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution (21 CFR Part 207). Interested persons were invited to submit comments on the draft document by May 29, 1979.

The FDA intends to revise Part 207 as a result of applying the principles of Operation Common Sense—a comprehensive program initiated by the Department of Health, Education, and Welfare (HEW) to make regulations more understandable and to expedite HEW's regulations development process. Operation Common Sense was described in a notice published in the Federal Register of November 18, 1977 (42 FR 59555). Its goals include rewriting regulations so that they are clear and understandable, revising regulations on the basis of experience since their issuance, and minimizing compliance burdens imposed by regulations. Similarly, Executive Order 12044, "Improving Government Regulations," which appeared in the Federal Register of March 24, 1978 (43 FR 12661), requires periodic review of regulations to determine whether language should be simplified or clarified, and whether the approach and requirements of a particular regulation continue to be warranted.

Operation Common Sense includes a requirement that each HEW agency issue a "model" regulation. In the case of FDA, its jurisidiction is so diverse that there are a number of kinds of regulations and, therefore, it is not reasonable to expect that one "model" regulation can be fashioned so as to apply to all categories of regulation. Thus, it is expected that preparation of "model" regulations will be undertaken in a number of categories of regulations.

Part 207 was chosen for priority review because of the statutory nature of the requirements of registration and drug listing, because of its operational impact on drug manufacturers, and because of its paperwork and reporting requirements. For these reasons, it is imperative that the regulation be easily understood and implemented as efficiently as possible.

No comments on the draft document were received. Accordingly, the agency proposes to adopt the revision of Part 207 set forth in the draft document along with several additional revisions made on the basis of the agency's further review of the draft document. These revisions simply incorporate editorial changes intended to make Part 207 more concise and readable. They do not include major substantive changes. For instance, cross-references to sections in other parts of Chapter I of Title 21 as currently written include the description "of this chapter," as in "§ 809.10 of this chapter." Because all cross-references in Part 207 are to other FDA regulations in Chapter I, "of this chapter" has been deleted from the proposed revisions. These cross-references should be understood to mean regulations in Chapter I of Title 21, unless otherwise specified. FDA intends to develop a section of general applicability to Chapter I concerning this editorial policy.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 506, 507, 510, 512, 701(a), and 704, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055, 1057 as amended (21 U.S.C. 321, 352, 355, 356, 357, 360, 360b, 371(a), 374)); Pub. L. 410, sec. 351, 58

Stat. 702 as amended (42 U.S.C. 262); and the Drug Listing Act of 1972 (Pub. L. 92-387, 86 Stat. 559-562 (21 U.S.C. 360 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 207 be revised as follows:

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

Subpart A—General

Subpart B—Exemptions

Subpart C—Procedures for Domestic Drug Establishments

Subpart D—Procedure for Foreign Establishments

Authority.—Secs. 201, 502, 505, 506, 507, 510, 512, 701(a), 704, Pub. L. 717, 52 Stat. 1040-1042 as amended, 1050-1053 as amended, 1055, 1057 as amended (21 U.S.C. 321, 352, 355, 356, 357, 360, 360b, 371(a), 374); sec. 351, Pub. L. 410, 58 Stat. 702 as amended (42 U.S.C. 262); the Drug Listing Act of 1972, Pub. L. 92-387, 86 Stat. 559-562 (21 U.S.C. 360 note).

Subpart A—General

§ 207.3 Definitions.

(a) The following definitions apply to this part:

(1) "Act" means the Federal Food, Drug, and Cosmetic Act approved June 25, 1938 (52 Stat. 1040 et seq., as amended (21 U.S.C. 301-392)).

(2) "Advertising" and "labeling" include the promotional material described in § 202.1(l) (1) and (2) respectively.

(3) "Any material change" includes but is not limited to any change in the name of the drug, in the quantity or identity of the active ingredient(s) or in the quantity or identity of the inactive ingredient(s) where quantitative listing of all ingredients is required by § 207.31(a)(2), any significant change in the labeling of a prescription drug, and any significant change in the label or package insert of an over-the-counter drug. Changes that are not significant include changes in arrangement or printing or changes of an editorial nature.

(4) "Bulk drug substance" means any substance that is represented for use in a drug and that, when used in the manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of the drug, but the term does not include intermediates used in the synthesis of such substances.

(5) "Commercial distribution" means any distribution of a human drug except for investigational use under § 312.1, and any distribution of an animal drug or an animal feed bearing or containing an animal drug for noninvestigational uses, but the term does not include internal or interplant transfer of a bulk drug substance between registered domestic establishments within the same parent, subsidiary, and/or affiliate company.

(6) "Drug product salvaging" means the act of segregating drug products that may have been subjected to improper storage conditions, such as extremes in temperature, humidity, smoke, fumes, pressure, age, or radiation, for the purpose of returning some or all of the products to the marketplace.

(7) "Establishment" means a place of business under one managment at one general physical location. The term includes, among others, independent laboratories that engage in control activities for a registered drug establishment (e.g., "consulting" laboratories), manufacturers of medicated feeds and of vitamin products that are drugs in accordance with section 201(g) of the act, human blood donor centers, and animal facilities used for the production or control testing of licensed biologicals, and establishments engaged in drug product salvaging.

(8) "Manufacture, preparation, propagation, compounding, or processing of a drug or drugs" means the making by chemical, physical, biological, or other procedures of any articles that meet the definition of drugs as defined in section 201(g) of the act, and the term includes manipulation, sampling, testing, or control procedures applied to the final product or to any part of the process. The term also includes repackaging or otherwise changing the container, wrapper, or labeling of any drug package to further the distribution of the drug from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer.

(9) "Representative sampling of advertisements" means typical advertising material (excluding labeling as determined in § 202.1(l) (1) and (2) which gives a balanced picture of the promotional claims used for the drug, e.g., if more than one medical journal advertisement is used but the promotional content is essentially identical, only one need be submitted.

(10) "Representative sampling of any other labeling" means typical labeling material (excluding labels and package inserts) which gives a balanced picture of the promotional claims used for the drug, e.g., if more than one brochure is used but the promotional content is essentially identical, only one need be submitted.

(b) The definitions and interpetations in sections 201 and 510 of the act apply when such terms are used in this part.

§ 207.7 Establishment registration and product listing for human blood and blood products.

(a) Owners and operators of all human blood and blood product establishments are required to register and list their products on Form FD-2830 as prescribed in Part 607.

(b) Owners and operators of all human blood and blood product establishments, who also manufacture or process other drug products at the same establishment, shall register with both the Bureau of Biologics and the Bureau of Drugs. Human blood and blood products shall be listed with the Bureau of Biologics, Food and Drug Administration, in accordance with Part 607, and other drug products shall be listed with the Bureau of Drugs, Food and Drug Administration, in accordance with this part.

Subpart B—Exemptions

§ 207.10 Exemptions for domestic establishments.

The following classes of persons are exempt from registration and drug listing in accordance with this part under section 510(g) (1), (2), and (3) of the act, or because the Food and Drug Administration has found, under section 510(g)(4), that their registration is not necessary for the protection of the public health.

(a) Pharmacies that operate under applicable local laws regulating dispensing of presciption drugs and that do not manufacture, prepare, propagate, compound, or process drugs for sale other than in the regular course of the practice of the profession of pharmacy including dispensing and selling drugs at retail. The supplying of prescription drugs by these pharmacies to a practitioner licensed to administer these drugs for his or her use in the course of his or her professional practice or to other pharmacies to meet temporary inventory shortages are not acts that require the pharmacies to register.

(b) Hospitals, clinics, and public health agencies that maintain establishments in conformance with any applicable local laws regulating the practices of pharmacy and medicine and that regularly engage in dispensing prescription drugs, other than human blood or blood products, upon prescription of practitioners licensed by law to administer these drug to patients under their professional care.

(c) Practitioners who are licensed by law to prescribe or administer drugs and who manufacture, prepare, propagate, compound, or process drugs solely for use in their professional practice.

(d) Persons who manufacture, prepare, propagate, compound, or process drugs not for sale but solely for use in research, teaching, or chemical analysis.

(e) Manufacturers of harmless inactive ingredients, which are excipients, colorings, flavorings, emulsifiers, lubricants, preservatives, or solvents, that become components of drugs and who otherwise would not be required to register under this part.

(f) Persons who use drugs to prepare feed for their own animals, except persons required under the act and its regulations to hold an approved new animal drug application (or supplement) or a Form FD-1800 in order to possess and use the drug.

(g) Any manufacturer of a virus, serum, toxin, or analogous product intended for treatment of domestic animals, who holds an unsuspended and unrevoked license issued by the Secretary of Agriculture under the animal virus-serum-toxin law of March 4, 1913 (37 Stat. 832 (21 U.S.C. 151 et seq.)), provided that this exemption from registration applies only to the manufacture of that animal virus, serum, toxin, or analigous product.

(h) Carriers, because of their receipt, carriage, holding, or delivery of drugs in the usual course of business as carriers.

(i) Persons who are engaged solely in manufacturing, preparing, propagating, compounding, or processing a general purpose laboratory reagent (as described in § 809.10(d)) intended for use in in vitro diagnostic procedures in the diagnosis of disease or in the determination of the state of health, to cure, mitigate, treat or prevent disease or its sequelae. This paragraph does not exempt these persons from registration and listing for medical devices required under Part 807.

Subpart C—Procedures for Domestic Drug Establishments

§ 207.20 Who must register and submit a drug list.

(a) Owners or operators of all drug establishments not exempt under section 510(g) of the act or Subpart B of this part that engage in manufacturing, preparing, propagating, compounding, or processing a drug or drugs are required to register and to submit a list of every drug in commercial distribution (whether or not the output of the establishment or any particular drug so listed enters interstate commerce); however, drug listing is not required for manufacturing, preparing, propagating, or processing an animal feed (including a feed concentrate, a feed supplement, and a complete animal feed) bearing or containing an animal drug, nor is drug listing required for establishments engaged in drug product salvaging. Listing information may be submitted by the parent, subsidiary, and/or affiliate company for all establishments when operations are conducted at more than one establishment and all the establishments are jointly operated and controlled.

(b) Owners or operators of establishments not otherwise required to register under section 510 of the act that distribute under their own label or trade name a drug manufactured, prepared, propagated, compounded, or processed by a registered establishment may elect to submit listing information directly to the Food and Drug Administration. A distributor who submits drug listing information shall include the registration number of the drug establishment that manufactured, prepared, propagated, compounded, or processed each drug listed. All distributors who submit drug listing information to the Food and Drug Administration assume full responsibility for compliance with all of the requirements of this part. Each distributor at the time of submitting or updating drug listing information as required under § 207.30 shall certify to the registered establishment that the submission has been made by providing a signed copy of Form FD-2656 (Registration of Drug Establishment) to the registered establishment that manufactures, prepares, propagates, compounds, or processes the drug. The original of Form FD-2656 showing this certification shall be submitted to the Food and Drug Administration. The certification shall be accompanied by a list showing the National Drug Code number assigned to each drug product by the distributor. If a distributor does not elect to submit drug listing information directly to the Food and Drug Administration and to obtain a Labeler Code, the registered establishment shall submit the drug listing information. The submissions and requests for Labeler Codes shall be made on Form FD-2658 (Registered Establishments' Report of Private Label Distributors).

(c) Preparatory to manufacturing, preparing, propagating, compounding, or processing a drug, owners or operators of establishments are required to register before the agency will approve their new drug applications, new animal drug applications, Forms FD-1800 (Medicated Feed Application), antibiotic Forms 5 and 6, or establishment license applications in order to manufacture biological products.

(d) No registration fee is required. Registration and listing do not constitute an admission or agreement or determination that a product is a drug within the meaning of section 201(g) of the act.

§ 207.21 Times for registration and drug listing.

(a) The owner or operator of an establishment entering into the manufacture, preparation, propagation, compounding, or processing of a drug or drugs (as these operations are defined in § 207.3) shall register the establishment within 5 days after the beginning of the operation and shall submit a list of every drug in commercial distribution at that time. If the owner or operator of the establishment (defined in § 207.3) has not previously entered into such an operation, registration shall follow within 5 days after the submission of a new drug application, new animal drug application, Form FD-1800, antibiotic Form 5 or 6, or an establishment license application in order to manufacture biological products. Owners or operators of all establishments so engaged shall register annually within 30 days after receiving registration forms from the Food and Drug Administration. Registration forms will be mailed to registered establishments by the Food and Drug Administration in

each calendar year, according to a schedule based on the first letter of the name of the establishment's parent company as stated on the firm's registration form or, if no parent company name is given on that form, by the first letter of the establishment's name. The schedule is as follows:

First letter of company name and date FDA will mail forms

A or B, January; C, D, or E, February; F, G, or H, March; I, J, K, L, or M, April; N, O, P, Q, or R, May; S or T, June; U, V, W, X, Y, or Z, July.

(b) Owners and operators of all establishments so registered shall update their drug listing information every June and December.

§ 207.22 How and where to register and list drugs.

(a) An establishment shall register the first time on Form FD–2656 (Registration of Drug Establishment) obtainable on request from the Bureau of Drugs, Drug Listing Branch (HFD–315), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or from Food and Drug Administration district offices. Subsequent annual registration shall be made in Form FD–2656 (Registration of Drug Establishment), which will be furnished by the Food and Drug Administration according to the schedule listed § 207.21(a) to establishments whose drug registration for that year was validated in accordance with § 207.35. The completed form shall be mailed to the above address within 30 days after receipt from the Food and Drug Administration.

(b) The first list of drugs and later June and December updatings shall be on Form FD–2657 (Drug Product Listing), obtainable upon request as described in paragraph (a) of this section. In lieu of Form FD–2657 (Drug Product Listing), tapes for computer inputs may be submitted if they contain the information specified in Form FD–2657. All formats proposed for this use will require review and approval by the Food and Drug Administration.

§ 207.25 Information required in registration and drug listing.

(a) Form FD–2656 (Registration of Drug Establishment) provides for furnishing or confirming information required by the act. This information includes the name and full address of the drug establishment; all trade names used by the establishment; the kind of ownership or operation (that is, individually owned partnership or corporation); and the name of the owner or operator of the establishment. The term "name of the owner or operator" includes in the case of a partnership the name of each partner, and in the case of a corporation the name and title of each corporate officer and director and the name of the State of incorporation. The required information shall be given separately for each establishment.

(b) Form FD–2657 (Drug Product Listing) Provides that information required by the act be furnished as follows:

(1) A list of drugs, including bulk drug substances and drug premixes for use in the manufacture of animal feeds as well as finished dosage forms, by established name as defined in section 502(e) of the act and by proprietary name, that are being manufactured, prepared, propagated, compounded, or processed for commercial distribution and that have not been included in any list previously submitted to the Food and Drug Administration on Form FD–2657 (Drug Product Listing) or in conjunction with the Food and Drug Administration voluntary inventory on Form FD–2422 (Survey Report of Marketed Drugs), or Form FD–2250 (National Drug Code Directory Input).

(2) For each drug listed that is regarded by the registrant as subject to section 505, 506, 507, or 512 of the act, the new drug application number, new animal drug application number, or Form 5 or Form 6 number, and a copy of all current labeling, except that only one representative container or carton label need be submitted where differences exist only in the quantity of contents statement.

(3) For each drug listed that is regarded by the registrant as subject to section 351 of the Public Health Service Act, the license number of the manufacturer.

(4) For each human drug listed that is subject to section 503(b)(1) of the act and regarded by the registrant as not subject to section 505, 506, or 507 of the act or 351 of the Public Health Service Act, and that is not manufactured by a registered blood bank, a copy of all current labeling (except that only one representative container or carton label need be submitted where differences exist only in the quantity of contents statement) and a representative sampling of advertisements.

(5) For each human over-the-counter drug or each animal drug listed that is regarded by the registrant as not subject to section 505, 506, 507, or 512 of the act, or 351 of the Public Health Service Act, a copy of the label (except that only one representative container or carton label need be submitted where differences exist only in the quantity of contents statement), package insert, and a representative sampling of any other labeling.

(6) For each prescription or over-the-counter drug so listed that is regarded by the registrant as not subject to section 505, 506, 507, or 512 of the act, or 351 of the Public Health Service Act, and that is not manufactured by a registered blood bank, quantitative listing of the active ingredient(s). Unless the quantitative listing is expressed as a percentage in the official compendium, the quantity of ingredient shall be stated in terms of the amount, not the percent, of that ingredient in each dosage unit, or if the drug is not in unit dosage form, the amount of the ingredient in a specific unit of weight or measure of the drug, except that for drug premixes for use in the manufacture of animal feeds, a nonantibiotic ingredient may be expressed in terms of percent. If a drug premix has been assigned a Product Code as provided for in § 207.35(b)(2)(iii), the quantitative listing of ingredients may be limited to each variation of level of active drug ingredient.

(7) For each drug listed, the registration number of every drug establishment within the parent company at which it is manufactured, prepared, propagated, compounded, or processed.

(8) For each drug listed, the National Drug Code (NDC) number. If no NDC Labeler Code number has been assigned, the Product Code and Package Code will be included and a Labeler Code will be assigned as described in § 207.35(b)(2)(i).

§ 207.26 Amendments to registration.

Changes in individual ownership, corporate or partnership structure, location, or drug-handling activity, shall be submitted on Form FD–2656 (Registration of Drug Establishment) as an amendment to registration within 5 days of these changes. Changes in the names of officers and directors of the corporations do not require this amendment but must be shown at the annual registration.

§ 207.30 Updating drug listing information.

(a) After submitting the initial drug listing information, every person who is required to list drugs under § 207.20 shall submit on Form FD–2657 (Drug Product Listing) during each subsequent June and December, or at the discretion of the registrant when the change occurs, the following information:

(1) A list of each drug introduced by the registrant for commercial distribution which has not been

included in any list previously submitted. All of the information required by § 207.25(b) shall be provided for each such drug.

(2) A list of each drug formerly listed in accordance with § 207.25(b) for which commercial distribution has been discontinued, including for each drug so listed the National Drug Code (NDC) number, the identity by established name and proprietary name, and date of discontinuance. It is requested but not required that the reason for discontinuance of distribution be included with this information.

(3) A list of each drug for which a notice of discontinuance was submitted under paragraph (a)(2) of this section and for which commercial distribution has been resumed, including for each drug so listed the NDC number, the identity by established name as defined in section 502(e) of the act and by any proprietary name, the date of resumption, and any other information required by § 207.25(b) not previously submitted.

(4) Any material change in any information previously submitted.

(b) When no changes have occurred since the previously submitted list, no report is required.

§ 207.31 Additional drug listing information.

(a) In addition to the information routinely required by §§ 207.25 and 207.30, the Food and Drug Administration may require submission of the following information by letter or by Federal Register notice:

(1) For a particular drug so listed that is subject to section 503(b)(1) of the act and regarded by the registrant as not subject to sections 505, 506, or 507 of the act, upon request made by the Food and Drug Administration for good cause, a copy of all advertisements.

(2) For a particular drug product so listed that is regarded by the registrant as not subject to section 505, 506, 507, or 512 of the act, upon a finding by the Food and Drug Administration that it is necessary to carry out the purposes of the act, a quantitative listing of all ingredients.

(3) For a particular drug product, upon request by the Food and Drug Administration, a brief statement of the basis upon which the registrant has determined that the drug product is not subject to section 505, 506, 507, or 512 of the act.

(4) For each registrant, upon a finding by the Food and Drug Administration that it is necessary to carry out the purposes of the act, a list of each listed drug product containing a particular ingredient.

(b) It is requested but not required that information concerning the quantity of drug distributed be submitted with the annual registration.

(c) It is requested but not required that a qualitative listing of the inactive ingredients be submitted for all listed drugs in the format prescribed in Form FD–2657 (Drug Product Listing).

(d) It is requested but not required that a quantitative listing of the active ingredients be submitted for all drugs listed which are subject to section 505, 506, 507, or 512 of the act or section 351 of the Public Health Service Act.

§ 207.35 Notification of registrant; drug establishment registration number and drug listing number.

(a) The Food and Drug Administration will provide to the registrant a validated copy of Form FD–2656 (Registration of Drug Establishment) as evidence of registration. This validated copy will be sent to the mailing address shown on the form. The Food and Drug Administration will assign a permanent registration number to each drug establishment registered in accordance with these regulations.

(b) A drug listing number will be assigned, using the National Drug Code (NDC) numbering system, to each drug or class of drugs listed as follows:

(1) If a drug is already listed in the National Drug Code System or in the National Health Related Items Code System, the number will be the same as that assigned under those codes. A lead zero will be added by the Food and Drug Administration to the first three characters of the code, which identifies the manufacturer or distributor, to expand the "Labeler Code" segment to four characters. The National Drug Code, Product Code, and Package Code configurations used to describe these drugs, or any new drugs added to the product line, will remain the same, i.e., a four-character Product Code and a two-character Package Code. Alphanumeric characters may be retained where they are already used in the Product Code and Package Code segments of the National Drug Code; however, these alphanumeric characters may be converted to all numeric digits. The manufacturer or distributor shall inform the Food and Drug Administration of the changes.

(2) If a registered establishment or distributor has not previously participated in the National Drug Code System or in the National Health Related Items Code System, the National Drug Code numbering system will be used in assigning a number, as follows (only numerics will be used):

(i) The first 5 numeric characters of the 10-character code indentify the manufacturer or distributor and are known as the Labeler Code. The Food and Drug Administration will expand the Labeler Code from five to six numeric characters when the available five-character code combinations are exhausted. These code numbers are assigned by the Food and Drug Administration and provided to the registrant along with the validated copy of Form FD–2656 (Registration of Drug Establishment). Any registered firm that does not have an assigned "Labeler Code" will be assigned one when registration and listing information are submitted.

(ii) The last 5 numeric characters of the 10-character code identify the drug and the trade package size and type. The segment that identifies the drug formulation is known as the Product Code and the segment that identifies the trade package size and type is known as the Package Code. The Product Code and the Package Code will be assigned by the manufacturer or distributor before drug listing and will be included in Form FD–2657 (Drug Product Listing). Either of two methods may be used by the manufacturer or distributor in assigning the Product and Package Codes: a 3–2 Product-Package Code configuration (e.g., 542–12) or a 4–1 Product-Package Code configuration (e.g., 5421–2). A manufacturer or distributor with a given Labeler Code may use only one such Product-Package Code configuration and this same configuration shall be used in assigning the Product-Package Codes for all drugs included in the drug listing. The manufacturer or distributor shall report to the Food and Drug Administration the Product-Package Code configuration used in assigning these codes.

(iii) If the drug formulation is a custom premix intended for use in the manufacture of an animal feed, a separate Product Code is required only for each variation of level of active drug ingredient.

(3) The NDC number is requested but not required to appear on all drug labels and in all drug labeling, including the label of any prescription drug container furnished to a consumer. If the NDC number is shown on a drug label, it shall be placed as follows:

(i) The NDC number shall appear prominently in the top third of the principal display panel of the label on the immediate container and of any outside container or wrapper. Instead of placing the NDC number in the top third

of the label, the NDC number may appear as part of and contiguous to any bar-code symbol for any drug product if the symbol appears prominently on the immediate container and on any outside container or wrapper and in a conspicuous location, but in no event on the natural bottom of a container or wrapper, provided that the bar-code symbol is compatible with the NDC, i.e., the symbol provides a format capable of encoding the numeric characters of an NDC number. The term "principal display panel," as used in this paragraph, means that part of a label most likely to be displayed, presented, shown, or examined under customary conditions of display to the consumer (for over-the-counter drug products) or to the dispenser (for prescription drug products).

(ii) The NDC number shall be preceded by either the prefix "NDC" or "N" when it is used on a label or in labeling. The prefix used for a drug product shall be used consistently on the label of the immediate container, outside container, or wrapper, if any, and on other labeling for that drug product.

(iii) The Product-Package Code configuration shall be indicated and the segments of the number shall be separated by a dash, e.g., NDC 15643–542–12 or N 15643–542–12.

(iv) All 10 characters shall appear and the leading zeros in any segment of the NDC number shall be shown, except that leading zeros may be omitted from any segment of the NDC number when the NDC number is used for product identification by direct imprinting on dosage forms or in the case of containers too small or otherwise unable to accommodate a label with sufficient space to bear both required and optional labeling information.

(v) The placing of the assigned NDC number on a label or in labeling does not require the submission of a supplemental new drug application, supplemental new animal drug application, or supplemental antibiotic Form 5 or 6.

(4)(i) If any change occurs to those product characteristics that clearly distinguish one drug product version from another, the registrant shall assign a new NDC number to the new product version and submit that information to the Food and Drug Administration. Such a change includes, but is not limited to, a change in: active ingredient(s); strength or concentration of active ingredient(s); dosage form; route of administration, if it also includes a change in product formulation; and product name. If, by notice in the Federal Register, the Food and Drug Administration requires a change in drug product characteristics and determines the change will require that a new product code be assigned to the reformulated product, the Food and Drug Administration will announce its determination in the Federal Register publication that requires the change, setting forth its reasoning and justification for its determination. If a change only in packaging is involved, the trade package code may be revised without assigning a new product code segment, but the Food and Drug Administration shall be informed about the new trade package code and characteristics.

(ii) When a drug product has been discontinued, its product code may be reassigned to another drug product 5 years after the expiration date of the discontinued product, or, if there is no expiration date, 5 years after the last shipment of the discontinued product into commerical distribution. Reuse of product codes may occur, under the specified conditions, regardless of the NDC, Product Code, and Package Code configuration used.

(c) Although registration and drug listing are required to engage in the drug activities described in § 207.20, validation of registration and the assignment of a drug listing number do not, in themselves, establish that the holder of the registration is legally qualified to deal in such drugs.

§ 207.37 Inspection of registrations and drug listings.

(a) A copy of the Form FD–2656 (Registration of Drug Establishment) filed by the registrant will be available for inspection in accordance with section 510(f) of the act, at the Bureau of Drugs, Registration Section (HFD–315), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857. In addition, there will be available for inspection at each of the Food and Drug Administration district offices the same information for firms within the geographical area of that district office. Upon request and receipt of a self-addressed stamped envelope, verification of registration number or location of a registered establishment will be provided.

(1) The following types of information submitted under the drug listing requirements will be available for public disclosure when compiled:

(i) A list of all drug products.

(ii) A list of all drug products arranged by labeled indications or pharmacological category.

(iii) A list of all drug products arranged by manufacturer.

(iv) A list of a drug product's active ingredients.

(v) A list of drug products newly marketed or for which marketing is resumed.

(vi) A list of drug products discontinued.

(vii) All labeling.

(viii) All advertising.

(ix) All information that has already become a matter of public knowledge.

(x) A list of drug products containing a particular active ingredient.

(2) The following types of information submitted in accordance with the drug listing requirement will not be available for public disclosure (except that any of the information will be available for public disclosure if it has already become a matter of public knowledge or if the Food and Drug Administration finds that confidentiality would be inconsistent with protection of the public health):

(i) Any information submitted as the basis upon which it has been determined that a particular drug product is not subject to section 505, 506, 507, or 512 of the act.

(ii) A list of a drug product's inactive ingredients.

(iii) A list of drugs containing a particular inactive ingredient.

(b) Requests for information about registrations and drug listings should be directed to Bureau of Drugs, Registration Section (HFD–315), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857.

§ 207.39 Misbranding by reference to registration or to registration number.

Registration of a drug establishment or drug wholesaler, or assignment of a registration number, or assignment of a NDC number does not in any way denote approval of the firm or its products. Any representation that creates an impression of official approval because of registration or possession of registration number or NDC number is misleading and constitutes misbranding.

Subpart D—Procedure for Foreign Drug Establishment

§ 207.40 Drug listing requirements for foreign drug establishments.

(a) Every foreign drug establishment whose drugs are imported or offered for import into the United States shall comply with the drug listing requirements in Subpart C of this part,

unless exempt under Subpart B of this part, whether or not it is also registered.

(b) No drug, unless it is listed as required in Subpart C of this part, may be imported from a foreign drug establishment into the United States except a drug imported or offered for import under the investigational use provisions of § 312.1. The drug listing information shall be in the English language.

(c) Foreign drug establishments shall submit as part of the drug listing, the name and address of the establishment and the name of the individual responsible for submitting drug listing information. Any changes in this information shall be reported to the Food and Drug Administration at the intervals specified for updating drug listing information in § 207.30(a).

Interested persons may, on or before October 1, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: July 24, 1979.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-23307 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-03-M

[21 CFR Part 808]

[Docket No. 76P-0344]

Oral Hearing on Proposed Regulation on California Application for Exemption From Preemption of Medical Device Requirements

AGENCY: Food and Drug Administration.

ACTION: Notice of Hearing.

SUMMARY: A public hearing will be held on the proposed rule on California's application for exemption from preemption for its medical device requirements. In preparing a final regulation, the agency will consider the administrative record of the hearing, along with al comments and other information received.

DATES: Written notices of appearance should be filed by August 30, 1979. The hearing will be held on October 3, 1979, and, if necessary, on October 4, 1979.

ADDRESSES: Written notices of appearance should be sent to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. The hearing will be held from 9 a.m. to 5 p.m. in Rm. W-1098, EDD Building, 800 Capitol Mall, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Bureau of Medical Devices (HFK-70), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7114.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 3, 1979 (44 FR 19438), the Food and Drug Administration (FDA) reproposed a regulation responding to an application by the State of California for exemption from Federal preemption for certain State medical device requirements.

In the same issue of the Federal Register, FDA published a notice of opportunity for interested persons to request an oral hearing on the proposed rule. The notice explained that interested persons could request an oral hearing on or before May 14, 1979. FDA has received several requests for an oral hearing.

Accordingly, FDA announces that an oral hearing regarding the California application for exemption from preemption of its medical device laws and regulations will be held on October 3, 1979 and, if necessary to accommodate all those who request to make a presentation, October 4, 1979, from 9 a.m. to 5 p.m., Rm. W-1098, EDD Building, 800 Capitol Mall, Sacramento, CA 95814. The oral hearing will be chaired by David M. Link, Director, Bureau of Medical Devices, Food and Drug Administration.

After reviewing the comments and the notices of appearance, FDA will schedule each appearance and notify each person of the time allotted for each appearance. The procedures to govern the hearing are those applicable to a public hearing before the Commissioner of Food and Drugs under Part 15 (21 CFR Part 15).

Interested persons who wish to participate may, on or before August 30, 1979, submit a notice of appearance with the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. All notices submitted should be identified with the Hearing Clerk docket number found in brackets in the heading of this notice and should contain the name, address, telephone number, any business affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation.

Groups having similar interests are requested to consolidate their comments and present them through a single representative. FDA may require joint presentations by persons with common interests. FDA will allocate the time available for the hearing among the persons who properly file a notice of appearance.

The administrative record of the proposed regulation will be open for 30 days after the hearing to allow comment on matters raised at the hearing.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 521, 90 Stat. 574 (21 U.S.C. 360k)) and under authority delegated to the Commissioner (21 CFR 5.1).

Dated: July 25, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-23507 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-03-M

EQUAL EMPLOYMENT COMMISISON

[29 CFR Ch. XVI]

Improving Government Regulations; Agenda of Significant Regulatory Activity

AGENCY: Equal Employment Opportunity Commission.

ACTION: Semiannual Agenda.

SUMMARY: This agenda contains a report on the status of the six regulatory actions the Commission announced in its previous agenda as well as an announcement of the significant regulatory actions that EEOC plans to take during the six-month period July 1979-January 1980. The agenda was developed under the guidelines in Executive Order 12044, Improving Government Regulations (43 FR 12661, March 24, 1978). The Commission's purpose in publishing the agenda is to allow interested persons an opportunity to participate in all stages of its

rulemaking process. The items mentioned in this agenda will be coordinated as appropriate under Executive Order 12067 (43 FR 28967, July 5, 1978).

FOR FURTHER INFORMATION CONTACT:

Frederick D. Dorsey, Director, Office of Policy Implementation, 202-634-7060.

Francesta E. Farmer, Director, Office of Interagency Coordination, 202-653-6490.

Signed at Washington, D.C. this 25th day of July 1979.

For The Commission.

Eleanor Holmes Norton,

Chair.

Semiannual Agenda of Regulations

A. Status of Regulatory Actions Previously Listed

1. Guidelines for the coordination and consultation required by Executive Order (EO) 12067. A draft set of procedures were circulated to the affected Federal agencies on December 8, 1978. The comments by the Federal agencies were reconciled by the Commission and a revised draft was recirculated on June 7, 1979 with a due date of June 29, 1979. These procedures will become the first Order issued under EEOC's 12067 authority. It has been determined by EEOC that these procedures and subsequent issuances, which rely on EO 12067 for authority, will be published as a system of "Orders under EO 12067". The orders will appear in the Federal Register for public comment before final issuance. In addition to issuing the guidance for coordination and consultation, the first Order will also describe the process EEOC will follow is issuing subsequent "Orders under EO 12067." Among subsequent Orders will be one giving guidance on processing of EEO complaints received by Title VI and other grantmaking agencies and the one giving guidance on consistent definitions. The Order on coordination and consultation will be published for public comment within the next 60 days.

2. Government-wide guidelines and/or regulations for processing of EEO complaints received by Title VI or other grantmaking agencies and programs. EEOC and Department of Justice (DOJ) staff have met several times to discuss the substance of a regulation and a draft regulation has been prepared. After preliminary approval by EEOC and DOJ, the draft will be circulated to Title VI agencies and other grantmaking agencies and programs for comment. It will then be published for public comment. A final regulation is anticipated by the end of the year. it will be jointly issued by EEOC and DOJ and will be the second "Order under EO 12067".

3. Guidelines on Discrimination because of Sex. These guidelines were published in final form in the Federal Register on April 20, 1979.

4. Recordkeeping Regulations. The Commission is continuing its re-evaluation of the possible need for a regulatory analysis.

5. Guidelines on Discrimination because of Religion. The present Guidelines have been reviewed, changes drafted and informal consultation conducted with affected Federal agencies as required by Executive Order 12067. The new proposed Guidelines are presently awaiting approval by the Commission for publication in the Federal Register for notice and comment.

6. Procedures for EEO in the Federal Government. The Commission is still reviewing existing regulations. The following two regulations have been developed, however, and may be published as interim regulations shortly.

a. Amending 29 CFR Part 1613 to provide for the award of attorneys fees at the administrative level in Federal EEO.

(1) *Need for the Regulation:* To provide full relief for discrimination at the administrative level and to prevent circumvention of the administrative process.

(2) *Legal basis:* Section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16; Reorganization Plan No. 1 of 1978; Executive Order 12106.

(3) *Regulatory Analysis:* The regulation is not expected to have an economic effect great enough to require a regulatory analysis.

(4) *Contact Persons:* Constance L. Dupre, Associate General Counsel, Legal Counsel Division, 202-634-6595, and John Rayburn, Director, Technical Guidance Division, 202-634-6855.

b. Amending 29 CFR 1613.234 and 1613.235, to revise the Federal EEO appellate procedure.

(1) *Need for the Regulation:* The new method used by the EEOC to review the decisions in Federal EEO complaints obviates the need for a right to request reopening of cases.

(2) *Legal Basis:* Section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16; Reorganization Plan No. 1 of 1978; Executive Order 12106.

(3) *Regulatory Analysis:* The regulation is not expected to have an economic impact great enough to require a regulatory analysis.

(4) *Contact Person:* Nestor Cruz, Director, Office of Review and Appeals, 202-653-7435.

c. Delegations to Merit Systems Protection Board.

(1) *Need for the Regulation:* The Merit Systems Protection Board cannot process those cases pending before it, which were filed before the effective date of the Civil Service Reform Act, without these delegations. The regulation also permits EEOC to treat pre-Civil Service Reform Act cases in a manner consistent with that Act.

(2) *Legal Basis:* Section 3(b) of Reorganization Plan No. 1, Section 705 (g)(1) of title VII, and general principles of delegation law.

(3) *Regulatory Analysis:* It is not anticipated that the regulations will have a great enough impact to require a regulatory analysis.

(4) *Contact Person:* Constance L. Dupre, Associate General Counsel, Legal Counsel Division, 202-634-6595.

B. New Regulations

1. EEOC Regulations to enforce section 504 of the Rehabilitation Act, 29 U.S.C. 794.

a. *Need for the Regulation:* section 504 and Executive order 11914 require each agency to promulgate such regulations as are necessary to enforce this section.

b. *Legal Basis:* Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 704.

c. *Regulatory Analysis:* The economic impact of these regulations has not been finally determined. It appears unlikely, however, that the impact will be great enough to require a regulatory analysis.

d. *Contact Person:* Constance L. Dupre, Associate General Counsel, Legal Counsel Division, 202-634-6595.

2. Regulations for processing Title VI complaints received by EEOC.

a. *Need for the regulation:* Title VI mandates that a procedure be established by each federal agency to process complaints of discrimination in programs and activities receiving federal financial assistance.

b. *Legal Basis:* Title VI of the civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*

c. *Regulatory Analysis:* It is not anticipated that the regulations will have an economic impact great enough to require a regulatory analysis.

d. *Contact Person:* Constance L. Dupre, Associate General Counsel, Legal Counsel Division, 202-634-6595.

3. Guidelines on Discrimination Because of Exposure to Hazardous Substances.

a. *Need for the Regulation:* Recently several situation have come to the

attention of EEOC and other Federal agencies' concerning the exclusion by employers of certain persons protected by Title VII from jobs in which there is exposure to certain toxic substances. The Guidelines will provide employers with guidance in their efforts to develop nondiscriminatory health and safety policies which comport with Title VII.

b. *Legal Basis:* Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*

c. *Regulatory Analysis*: The Commission's review has not progressed far enough to determine whether a regulatory analysis will be required.

d. *Contact Persons*: John Suhre, Supervisory-Attorney, Office of Policy Implementation, 202–634–7060 and Francesta Farmer, Director, Office of Inter-agency Coordination, 202–653–5490.

4. Consistent definitions for use in Federal EEO programs: Order No. 3 under Executive Order 12067.

a. *Need for Regulations:* Section 1–301 (a) of EO 12067 places the responsibility for defining the nature of employment discrimination with the EEOC. The need for consistent Federal definitions of key concepts such as affirmative action, systemic discrimination, adverse impact, disparte treatment, availability, and relevant labor market is acute due to the passage in recent years of employment discrimination prohibitions in several major program laws. These laws have increased the number of agencies responsible for enforcing employement discrimination prohibitions. Timely guidance and consistent definitions by EEOC will facilitate the development of Federal EEO issuances by the agencies.

b. *Legal Basis*: Reorganization Plan No. 1 of 1978; Section 1–301 (a) of Executive Order 12067.

c. *Regulatory Analysis*: It is not anticipated that a regulatory analysis will be required.

d. *Contact Person*: Francesta E. Farmer, Director, Office of Interagency Coordination, 202–653–5490.

5. Government-wide System of notification to Federal agencies of EEO issuances under development.

a. *Need for Regulation*: Sections 1–201 and 1–301 (a) of EO 12067 assigns to EEOC the responsibility for providing leadership and coordination to Federal agencies in the development of standards, guidelines and policies dealing with employment discrimination. Under current practice, most affected agencies have no notice of proposed rulemaking or issuances under consideration in time for them to contribute to the early develolpment of the issuances. Duplication, inconsistency and potential conflict can be avoided if EEOC and affected agencies have more timely information about rules or issuances under development.

b. *Legal Basis*: Reorganization Plan No. 1 of 1978; Sections 1–201 and 1–301 (a) of Executive Order 12067.

c. *Regulatory Analysis:* It is not anticipated that a regulatory analysis will be required.

d. *Contact Person:* Francesta E. Farmer, Director, Office of Interagency Coordination, 202–653–5490.

C. Changes to Existing Regulations

1. Although the EEOC has adopted the recordkeeping and administrative regulations of the Department of Labor for the Equal Pay Act, 29 U.S.C. 201 *et seq.*, it has not adopted 29 CFR Part 800, the Interpretative Regulations. The Commission will review these regulations and issue its own interpretations.

a. *Need for the Regulation:* Provide guidance in accordance with the most recent court decisions and consistent with the Commission's interpretations of these decisions and the Act.

b. *Legal Basis:* Reorganization Plan No. 1 of 1978; Equal Pay Act, 29 U.S.C. 201 *et seq.*

c. *Regulatory Analysis:* The economic impact of these changes is being analyzed.

d. *Contact Persons:* Constance L. Dupre, Associate General Counsel, Legal Counsel Division, 202–634–6595, and Frank McGowan, Field Manager, Office of Field Services, 202–634–6863.

2. The Commission has adopted the procedure utilized for complaints under the Age Discrimination in Employment Act (ADEA) of 1967, 29 U.S.C. 621 *et seq.*, and the ADEA recordkeeping regulations. The commission will, however, revise the Department of Labor's interpretations of the ADEA.

a. *Need for Regulations:* This will permit the Commission to publish regulations that conform with the latest amendments to the ADEA and that comply with the Commission's interpretation of the Act.

b. *Legal Basis:* Reorganization Plan No. 1 of 1978; Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*

c. *Regulatory Analysis:* The regulation is not expected to have an economic impact great enough to require a regulatory analysis.

d. *Contact Persons:* Constance L. Dupre, Associate General Counsel, Legal Counsel Division, 202–634–6595, and Frank McGowan, Field Manager, Office of Field Services, 202–634–6863.

3. Amending 29 CFR 1601.21 (b), (d) and 1601.28, which deal with EEOC notices of right-to-sue and reconsideration of determinations.

a. *Need for the Regulation:* The regulations need to be amended in order to protect the Charging Party's opportunity to file a Title VII action in U.S. District Court after a determination is reconsidered. The Commission is discussing this matter with the Department Justice because the development of the regulation may necessitate conforming changes in the Department's practices.

b. *Legal Basis:* Section 713 (a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–12 (a).

c. *Regulatory Analysis:* The regulation is not expected to have an economic impact great enough to require a regulatory analysis.

d. *Contact Persons:* Constance L. Dupre, Associate General Counsel, Legal Counsel Division, 202–634–6595, and Ronnie Blumenthal, Attorney-Adviser, Office of Field Services, 202–634–6850.

4. Amending 29 CFR 1611.1 *et seq.*, the Commission's Privacy Act Regulations.

a. *Need for the Regulation:* The regulations must be amended to reflect EEOC's authority over Federal EEO records. This authority was previously vested in the Civil Service Commission. Additionally, the Commission is considering exempting Federal EEO records from access under the Privacy Act.

b. *Legal Basis:* Reorganization Plan No. 1 of 1978; Privacy Act of 1974. U.S.C. 552a.

c. *Regulatory Analysis:* The regulation is not expected to have an economic impact great enough to require a regulatory analysis.

d. *Contact Person:* Constance L. Dupre, Associate General Counsel, Legal Counsel Division, 202–634–6595

5. Guidelines on Religious Discrimination.

a. *Neeed for the Regulation:* After the United States Supreme Court rendered its decision in *Trans World Airlines Inc.* vs *Hardison*, 432 U.S. 63 (1977), there was concern about the duty of employers and labor organizations to provide reasonable accommodation for the religious practices of employees or prospective employees. The proposed changes to the Commission's existing *Guidelines on Discrimination Because of Religion* will clarify this duty.

b. *Legal Basis:* Section 701 (j) and 713 (a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e. (j), 2000e–12(a).

c. *Regulatory Analysis:* The regulation is not expected to have an economic impact great enough to require a regulatory analysis.

d. *Contact Person:* Merle Morrow, Supervisory-Attorney, Office of Policy Implementation, 202–634–7060.

D. Regulations Scheduled for Review

1. Age Discrimination in Employment Act Recordkeeping Regulations.

a. *Purpose of Review:* To determine what changes, if any, are required to make to these regulations consistent with the recordkeeping regulations under Title VII of the Civil Rights Act of 1964, as amended.

b. *Contact Person:* Constance L. Dupre, Associate General Counsel, Legal Counsel Division, 202–634–6595.

2. Procedures for EEO in the Federal Government.

a. *Purpose of Review:* Due to Reorganization Plan No. 1 of 1978, effective January 1, 1979, certain functions relating to EEO in the Federal Government were transferred to EEOC. The Commission believes it appropriate to continue its review of existing regulations concerning the Federal EEO program in order to determine what further changes, if any, are needed.

b. *Contact Person:* Constance L. Dupre, Associate General Counsel, Legal Counsel Division, 202–634–6595, Alfredo Mathew, Director, Office of Government Employment, 202–634–6915, Nestor Cruz, Director, Office of Review and Appeals, 202–653–7435, and John Rayburn, Director, Technical Guidance Divison, 202–634–6855.

[FR Doc. 79-23512 Filed 7-30-79; 8:45 am]

BILLING CODE 6570-06-M

POSTAL SERVICE

[39 CFR Part 10]

International Express Mail Rates; Rates to Bermuda

AGENCY: Postal Service.

ACTION: Proposed International Express Mail Service Rates to Bermuda.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service proposes to begin International Express Mail Service with Bermuda at rates indicated in the tables below.

An International Express Mail agreement with Bermuda has recently been concluded. It is anticipated that the proposed rates would become effective September 1, 1979.

DATE: Comments must be received on or before August 22, 1979.

ADDRESS: Written comments should be directed to the General Manager, Expedited Mail Services Division, Customer Services Department, U.S. Postal Service, Washington, D.C. 20260. Copies of all written comments will be available for public inspection and photocopying between 9 AM and 4 PM, Monday through Friday, in Room 5936, 475 L'Enfant Plaza, West, SW, Washington, D.C. 20260.

FOR FURTHER INFORMATION CONTACT: Patricia M. Gibert, (202) 245–3624.

SUPPLEMENTARY INFORMATION: Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirement of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views or arguments concerning the proposed rates of postage for International Express Mail set out in the following table (designated 8–10 for inclusion in Publication 42, International Mail, incorporated by reference, 39 CFR 10.1).

(39 U.S.C. 401, 403, 404(2), 407, 410(a), Universal Postal Convention, Lausanne, 1974, T.I.A.S. No. 8231, Art. 6.).

W. Allen Sanders,

Acting Deputy General Counsel.

BILLING CODE 7710-12-M

TABLE 8-10

BERMUDA

INTERNATIONAL EXPRESS MAIL
CUSTOM DESIGNED SERVICE

POUNDS (up to & including)	ZONE TO INT'L EXCHANGE OFFICE						
	3	4	5	6	7	8	9
1	26.48	26.51	26.55	26.59	26.63	26.68	26.73
2	27.18	27.24	27.32	27.40	27.48	27.58	27.68
3	27.88	27.97	28.09	28.21	28.33	28.48	28.63
4	28.58	28.70	28.86	29.02	29.18	29.38	29.58
5	29.28	29.43	29.63	29.83	30.03	30.28	30.53
6	29.98	30.16	30.40	30.64	30.88	31.18	41.48
7	30.68	30.89	31.17	31.45	31.73	32.08	32.43
8	31.38	31.62	31.94	32.26	32.58	32.98	33.38
9	32.08	32.35	32.71	33.07	33.43	33.88	34.33
10	32.78	33.08	33.48	33.88	34.28	34.78	35.28
11	33.48	33.81	34.25	34.69	35.13	35.68	36.23
12	34.18	34.54	35.02	35.50	35.98	36.58	37.18
13	34.88	35.27	35.79	36.31	36.83	37.48	38.13
14	35.58	36.00	36.56	37.12	37.68	38.38	39.08
15	36.28	36.73	37.33	37.93	38.53	39.28	40.03
16	36.98	37.46	38.10	38.74	39.38	40.18	40.98
17	37.68	38.19	38.87	39.55	40.23	41.08	41.93
18	38.38	38.92	39.64	40.36	41.08	41.98	42.88
19	39.08	39.65	40.41	41.17	41.93	42.88	43.83
20	39.78	40.38	41.18	41.98	42.78	43.78	44.78
21	40.48	41.11	41.95	42.79	43.63	44.68	45.73
22	41.18	41.84	42.72	43.60	44.48	45.58	46.68
23	41.88	42.57	43.49	44.41	45.33	46.48	47.63
24	42.58	43.30	44.26	45.22	46.18	47.38	48.58
25	43.28	44.03	45.03	46.03	47.03	48.28	49.53
26	43.98	44.76	45.80	46.84	47.88	49.18	50.48
27	44.68	45.49	46.57	47.65	48.73	50.08	51.43
28	45.38	46.22	47.34	48.46	49.58	50.98	52.38
29	46.08	46.95	48.11	49.27	50.43	51.88	53.33
30	46.78	47.68	48.88	50.08	51.28	52.78	54.28
31	47.48	48.41	49.65	50.89	52.13	53.68	55.23
32	48.18	49.14	50.42	51.70	52.98	54.58	56.18
33	48.88	49.87	51.19	52.51	53.83	55.48	57.13

NOTES: 1) Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a Designated Post Office.

2) Pick-up is available under a Service Agreement for an added charge of $5.25 for each pick-up stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pick-up charge.

3. If tendered at origin airport mail facility, deduct $3.00 from these rates.

[FR Doc. 79-23483 Filed 7-30-79; 8:45 am]
BILLING CODE 7710-12-C

[39 CFR Part 111]

Preparation of Bulk Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would amend regulations governing the prparation of second-class, controlled circulation, third-class, fourth-class bound printed matter, special rate fourth-class bulk mailings and library rate mailings. In general, the proposal revises the destinations to which packages and sacks of mail must be presorted, offers a number of optional sortations, and changes the minimum quantities of mail for which a bulk mailer must perpare sacks. The eligibility requirements for the lower second-class per piece rates have been altered as a result of these general bulk mail preparation revisions. In addition, a number of minor changes have been made to related mail preparation regulations.

DATE: Comments must be received on or before August 20, 1979.

ADDRESS: Written comments should be directed to the Director, Office of Mail Classification, Rates & Classification Department, U.S. Postal Service, Washington, D.C. 20260. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 1610, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ernest Collins, 202/245-4749.

SUPPLEMENTAL INFORMATION: From time to time it is necessary for the Postal Service to revise the preparation requirements for the various categories and classes of bulk mail in order to bring them into line with changes and refinements in the processing procedures and methods of handling such mail employed by the Postal Service and mailers. This proposal presents a general revision of the regulations governing the preparation of second-class, controlled circulation, third-class, fourth-class bound printed matter, special rate fourth-class bulk mailings, and library rate mailings. The proposed regulations reflect a variety of mail processing changes, such as the widespread practice among mailers of sorting principally to five- and three-digit ZIP Code destinations, the adjustment of postal processing to the use of specific five-digit ZIP Codes within a multi-ZIP Coded city instead of the lowest ZIP Code for such a city, and the desirability of parcels sorted according to the destination bulk mail centers (BMCs) instead of three-digit ZIP Code or sectional center facility (SCF) destinations. These changes are designed to better align mailer preparation requirements with current postal processing procedures in order to provide more efficient postal processing of bulk mailings.

Central to this proposed revision is the recognition of the "package" (or parcel if appropriate) as the basic unit of mail processing. Six or more copies of a second-class publication or ten or more pieces of third-class matter will generally constitute a "package." The Postal Service is shifting away from the use of one-third of a sack as a standard unit for mail preparation because, under current bulk mail processing methods, we believe it will be more efficient and advantageous to postal operations to have additional through put on presorted packages of bulk mail than to receive larger quantities of mail per sack.

The use of one-third of a sack as a standard unit for mail preparation was developed during the time when most mail was transportated by rail. In order to minimize the charges for sack handling assessed by the railroads, the Post Office Department required the use of sacks which were at least one-third full. Because of changes in the modes of transportation used by the Postal Service, the need for a one-third of a sack standard is no longer as paramount as in the past.

The mail preparation changes reflected in these proposed regulations are designed to encourage the sortation of sacks as close to the final destination of the enclosed mail as possible. The finer presortation of sacks which will result will reduce the sortation of individual packages of mail at SCFs and State Distribution Centers (SDCs).

As a result of the treatment of the package of mail (or parcel) as the basic unit of mail processing, the eligibility requirements for the lower second-class per piece rates have been altered. In addition, a number of minor changes have been made to related mail preparation regulations in keeping with the comprehensive scope of this proposal.

Currently mailers are required to sort most bulk mailings to five-digit ZIP Codes, multi-ZIP Coded cities, SCF delivery areas, States, and mixed states. In general, the proposed rule would require mailers to sort most bulk mailings to five-digit ZIP Codes, three-digit ZIP Code prefixes, States and mixed states. Mailers would have the option to sort to carrier routes, multi-ZIP Coded cities, SCF and SDC delivery areas as well when they feel the resultant service advantages warrant such additional preparation. Furthermore, bulk mailings of machinable parcels would be required to be sorted to five-digit ZIP Codes and destination BMC delivery areas.

The following list contains the minimum quantities of mail which would require sacking:

Class or subclass	Minimum quantity
Second-Class and Controlled Circulation.	4 packages
Third-Class	12 packages
Special Rate Fourth-Class:	
Level A	8 pieces, 20 pounds or 1,000 cubic inches
Level B	4 pieces, 20 pounds or 1,000 cubic inches
Bound Printed Matter & Library Rate.	10 pieces, 20 pounds or 1,000 cubic inches

For second-class mail, the Postal Service proposes to amend the preparation requirements in sections 464.1 through 464.6 of the Domestic Mail Manual to set forth the new second-class packaging and sacking requirements. Those provisions require packages of six or more copies and sacks of four or more packages to be made up to five-digit ZIP Code, three-digit ZIP Code, State, and mixed states destinations. Existing regulations concerning preparation of second-class bulk mailings to multi-ZIP Coded cities require five-digit ZIP Code preparation only for specified cities. The present regulations, while recommending that mailings to other multi-ZIP Coded cities be prepared in this manner, permit mailings to those cities to be presorted to the lowest ZIP Code for the city. The proposed change would standardize multi-ZIP Coded city preparation procedures by requiring five-digit ZIP Code preparation of packages and sacks whenever there is sufficient volume to do so. This proposed change would standardize multi-ZIP Coded city preparation procedures and enable the Postal Service to process and deliver these mailings in a more timely and efficient manner.

In recent years, the mail processing operations of the Postal Service have changed significantly. Much of the mail permitted to be prepared to the lowest ZIP Code for a city is now being sorted according to five digit ZIP Codes. All of the bulk mail centers and many city post offices have adopted these sorting methods. Accordingly, preparation of bulk mail to the lowest ZIP Code for a city is no longer appropriate and is

resulting in that mail being misdirected and delayed. This proposed change, by eliminating the lowest ZIP Code for a city sort and requiring that all second-class bulk mailings be sorted to five-digit ZIP Codes whenever possible, will bring the preparation of this mail into line with the current processing operations of the Postal Service and enable the Postal Service to avoid the cost, inefficiency and delay presently incurred when mail sorted to the lowest ZIP Code for a city must be rerouted and manually sorted. This proposal will also eliminate the misconception of some mailers that the list of multi-ZIP Coded cities is a list of cities exempt from the five-digit ZIP Code preparation requirement.

It is not expected that the proposal to require five-digit ZIP Code preparation to all multi-ZIP Coded cities will significantly alter preparation procedures for most bulk mailers. Many of them already presort to five-digit ZIP Codes for all multi-ZIP Coded cities, as recommended in the present regulations. Mailers will continue to have the option of also sorting to multi-ZIP Coded cities as well when they feel the resultant service advantages warrant such additional preparation. The number of cities to which the optional city sort may be made has also been increased by 113.

In conjunction with the above revisions, the proposal would also establish a required three-digit ZIP Code prefix sortation and make the present SCF sortation optional upon completion of the three-digit ZIP Code sort. This change reflects the current preference of many mailers to sort to the three-digit ZIP Code prefix. The sort is much simpler than combining the various five-digit ZIP Codes of some multi-ZIP Coded cities or the three-digit ZIP Code prefixes of SCFs which are not always numerically sequential. Furthermore, optional carrier route and State Distribution Center sortations have been added to provide greater flexibility for mailers who desire a finer sortation.

Present section 464.6 would be revised to reflect the packaging and sacking requirements in proposed sections 464.1 and 464.2. As a result, to qualify for the second-class level B or E piece rate, a piece of second-class mail must be in a five-digit ZIP Code package inside a five-digit ZIP Code sack or in a mulit-ZIP Coded city or unique three-digit ZIP Code city package and in a respectively prepared sack. Similar preparation of carrier route pieces would be required for the second class level C piece rate.

Present section 464.31 would be revised to eliminate most the exceptions to the requirement that the address on each piece of second-class mail must include the ZIP Code. These exceptions, which apply to second-class, controlled circulation, and bulk third-class mailings are for pieces sorted to carrier routes or five-digit ZIP Codes. The exception or pieces bearing the exceptional address format will be continued. Often, packages containing pieces addressed to the same five-digit ZIP Code are placed in multi-ZIP Code city or SCF sacks. When this occurs, a postal employee at the facility where the sack is unloaded may not be able to easily determine the proper destination of the package. If no piece in the package bears a ZIP Code, the postal employee may place the package with other non-ZIP Coded mail. This would result in the use of additional time to determine the mail's destination which would likely delay delivery of the pieces.

The use of ZIP Codes provides both mailers and postal employees with an effective means to verify presort. When ZIP Codes are not used, verification must be accomplished by reviewing the cities shown in the address. This is more time consuming and much less effective as many cities are assigned more than one five-digit ZIP Code. The Postal Service believes this revision of preparation requirements is an ideal time to delete these exceptions to the required use of the ZIP Code. We do not believe that this proposed change would involve extensive modification of most mailers' records because most address records used by mailers include ZIP Codes. In most instances, mailers would only need to transfer this information to their address labels.

Packaging and sacking requirements similar to those discussed above are also proposed for controlled circulation and third-class mail in proposed changes to sections 564 and 663. Proposed section 663.132h would add a new regulation providing that Management Section Center managers may authorize third-class bulk mailers to prepare "loose pack sacks," *i.e.*, the placement of unbundled, unbound mail in a receptacle such as a mail sack. This practice is currently permitted by the Postal Service; the proposed regulation is designed to formalize and inform all mailers of the practice.

Proposed section 663.22 would specify the preparation requirements for machinable third-class parcels. It would require machinable parcels to be prepared in sacks to five-digit ZIP Code destinations and destination BMC delivery areas. The BMC separations for machinable parcels reflect the fact that BMCs, rather than multi-ZIP Coded cities or SCFs, sort machinable parcels to five-digit ZIP Codes. These parcel preparation requirements are now offered to mailers as an option. Their mandatory application will reduce the number of separations a parcel mailer must make and will better conform to current postal processing procedures.

This proposed rule would also modify the preparation requirements for bound printed matter, special rate, and library rate fourth-class mail. The sacking requirements and machinable parcel preparation requirements in proposed sections 763.2, 763.3 and 763.6 for bound printed matter would be revised to be consistent with the requirements discussed above for second-class, controlled circulation and third-class bulk mailings. Proposed sections 724.2 and 764 would permit mailers of machinable parcels to claim the level B rates for 4 pieces, 20 pounds, or 1,000 cubic inches sorted to destination BMCs rather than three-digit ZIP Code prefixes. As currently required, mailers would make five-digit separations if these minimum quantities were met or exceeded.

Finally, the sacking requirements for library rate mail would also be revised to be consistent with those for bound printed matter and other bulk mail. Proposed section 765 would elminate the present distinction between mailings of at least 5,000 pieces and mailings of at least 1,000 pieces. All mailings of at least 1,000 pieces would be required to be prepared in five-digit ZIP Code sacks where appropriate. The other requirements are the same as proposed for bound printed matter and differ depending upon the machinability of the mail. The Postal Service does not anticipate that this change will have much effect on library rate mailers.

When the Postal Service publishes proposed regulations in the Federal Register for comment, it generally allows a comment period of 30 days or more. In this case, however, it seems unnecessary to provide the full 30 day period, since the substance of the proposals published here were widely circulated to affected mailers by the Joint Industry/Postal Service Task Force on Alternative Delivery Services. This Task Force approved these proposals and recommended their speedy adoption. Moreover, these proposals would generally relieve existing presort restrictions. Accordingly, the Postal Service believes there are good reasons to shorten the comment period to 20 days in this case.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed

rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions of the Domestic Mail Manual:

(39 U.S.C. 401).

W. Allen Sanders,
Acting Deputy General Counsel.

Part 462 Preparation

In 462.3, revise 462.31 to read as follows:

462.31 Addressing

.31 Each piece including the top copy of a firm package (see 464.111) must bear the name and address of the subscriber. The address must include the ZIP Code. Exception: the ZIP Code may be omitted from pieces bearing a simplified address in accordance with 122.41.

Part 464 Presort Requirements

In 464, revise 464.11 to read as follows: Renumber 464.13 as 464.12, 464.18 as 464.13, 464.19 as 464.14; delete existing 464.12, 464.14, 464.15, 464.16, 464.17; revise 464.2 to read as follows; revise 464.32d to read as follows; revise 464.426 to read as follows; revise 464.6 to read as follows:

464 Presort Requirements (See Exhibit 464)

464.1 Packaging Requirements

.11 *Sortation*

.111 *Firm Packages.* When there are two or more copies for the same address they must be made up into one package if only one piece rate is paid for the group. Affix blue label F (see 464.14). When there is more than one package sent to one address, mailers are allowed to include a package identification notice such as 1 of 4, 2 of 4, etc., on the package wrapper, provided such endorsement does not interfere with the clarity of the address.

.112 *Optional Carrier Packages.* When there are six or more copies for the same carrier route, rural route, lockbox section or general delivery unit, they may, at the mailer's option, be made up into a carrier package in packages of six or more. Such packages may qualify for the level C per piece rate. See 464.6. Whenever a carrier route package is not placed in a sack labeled to show that it only contains packages for the same carrier route, a facing slip, marked as shown below, must be affixed to the front of the package.

Line 1: 5-Digit ZIP Code of Address

Line 2: Contents and Carrier Route, Rural Route, Lockbox Section, or General Delivery Unit

Line 3: Post Office of Entry

Sample Carrier Route Facing Slip:

SAN FRANCISCO CA 94133
NEWS RURAL ROUTE 12
PORTLAND OR 972

.113 *5-Digit Packages.* When there are six or more copies for the same 5-digit ZIP Code destination, they must be made up into 5-digit packages. Mailers are encouraged, but are not required, to affix red label D. Copies may qualify for the Level B or Level E per piece rate. See 464.6.

.114 *Optional City Packages.* When, after making up 5-digit packages, there are six or more copies remaining for one of the following multi-ZIP Coded offices, the mailer is encouraged to prepare a "city" package. A yellow label C must be affixed to city packages. Such packages may qualify for the level B or level E per piece rate. See 464.6.

Alabama: Gadsden	35601-03
Alaska: Anchorage	99501-10
Arkansas: North Little Rock	72114-19
California:	
Beverly Hills	90210-15
Canoga Park	91303-07
Concord	94518-24
Daly City	94014-17
Downey	90240-42
El Monte	91733-34
Fremont	94539-40
Fullerton	92631-38
Gardena	90247-49
Garden Grove	92640-45
Hayward	94541-46
La Puente	91744-49
Modesto	95350-56
Orange	92665-69
Pomona	91766-69
Redwood City	94061-65
San Fernando	91340-49
San Leandro	94577-79
Santa Clara	95050-54
Santa Rosa	95401-06
Stockton	95201-12
Sunnyvale	94086-88
Whittier	90601-12
Colorado: Pueblo	81001-19
Connecticut: Waterbury	06701-24
Florida:	
Clearwater	33515-20
Daytona Beach	32014-23
Fort Myers	33901-06
Hialeah	33010-16
Hollywood	33019-29
Lakeland	33801-03
Pensacola	32501-22
Pompano Beach	33060-68
Sarasota	33577-83
Tallahassee	32301-13
West Palm Beach	33401-11
Georgia:	
Albany	31701-07
Decatur	30030-38
Illinois:	
Arlington Heights	60004-06
Aurora	60504-07
Decatur	62521-26
East St. Louis	62201-06
Joliet	60431-36
Melrose Park	60160-65
Indiana:	
Anderson	46011-17
Hammond	46320-27
Lafayette	47901-07
Muncie	47302-06
Terre Haute	47801-12
Kentucky:	
Covington	41011-19
Newport	41071-76
Louisiana:	
Metairie	70001-11
Shreveport	7101-10, 18-66
Maryland:	
Hyattsville	20780-86
Rockville	20850-57
Massachusetts:	
Fall River	02720-26
Lowell	01850-54
Lynn	01901-10
New Bedford	02740-48
Michigan:	
Ann Arbor	48103-09
Battle Creek	49014-17
Birmingham	48008-12
Dearborn	48120-26
Jackson	49201-04
Kalamazoo	49001-09
Livonia	48150-57
Muskegon	49440-45
Pontiac	48053-59
Royal Oak	48067-73
Saginaw	48601-07
Saint Clair Shores	48080-83
Warren	48089-93
Mississippi: Biloxi	39530-34
Missouri: Independence	63031-34
New Jersey:	
Clifton	07011-15
East Orange	01017-19
Hackensack	07601-11
Montclair	07042-44
Orange	07050-52
Plainfield	07060-63
Rahway	07065-67
Ridgewood	07450-52
Rutherford	07070-75
New York:	
Floral Park	11001-05
Hempstead	11550-54
Long Island City	11101-11
Mount Vernon	10550-59
Troy	12180-83
North Carolina:	
Fayetteville	28301-06
High Point	27260-64
Ohio:	
Hamilton	45011-25
Lima	000000
Warren	44481-86
Oregon:	
Eugene	97401-05
Salem	97301-14
Pennsylvania:	
Bethlehem	18015-18
Johnstown	15901-09
Media	19063-65
Norristown	19401-09
Pittston	18640-44
Rhode Island: Pawtucket	02860-65
South Carolina:	
Charleston	29401-12
Greenville	29601-15
Spartanburg	29301-04
Texas: Wichita Falls	76301-11
Virginia:	
Falls Church	22040-46
Hampton	23660-70
Lynchburg	24501-15
Newport News	23601-30
Roanoke	24001-50
Virginia Beach	23450-63

.115 *3-Digit Packages.* When there are six or more copies for a 3-digit ZIP Code prefix, after the required 5-digit packages and optional city packages have been made, they must be made up into 3-digit packages. A green label 3 must be affixed to each package. Copies in packages of six or more addressed to multi-ZIP Coded cities having a unique 3-digit ZIP Code may qualify for the level B or E per piece rate. See 464.6. These cities are listed in Publication 65, *National ZIP Code and Post Office Director.*

.116 *Optional SCF Packages.* When there are six or more copies for post offices in the same Sectional Center Facility delivery area remaining after the required 5-digit and 3-digit packages have been made, the mailer is encouraged to prepare an SCF package. A green label 3 must be affixed to each

package. A list of all SCF's, the first three digits of all ZIP Codes served by these facilities, and the lowest 3-digit ZIP Codes that are to be used on SCF sack labels is shown in the "Sectional Center Facilities" table contained in Publication 65, *National ZIP Code and Post Office Directory.*

.117 *Optional SDC Packages.* When there are six or more copies for post offices in the same State Distribution Center (SDC) service area remaining after the 5-digit, optional city, 3-digit and optional SCF packages have been made, the mail is encouraged to prepare a State Distribution Center service area package. In those instances where this State Distribution Center service area makeup is finer than the mandatory state makeup, a facing slip must be used on SDC packages. Individual copies in SDC packages must be wrapped.

.118 *State Packages.* When there are six or more copies for a State remaining after the 5-digit, optional city, 3-digit, optional SCF and optional SDC packages have been made, they must be made up into state packages. An orange label S must be affixed to the packages. Individual copies in state packages must be wrapped.

.119 *Mixed State Packages.* Copies remaining after packages have been made, as outlined above, must be made up into mixed state packages. A mixed state white facing slip must be attached to the packages. Individual copies in mixed state packages must be wrapped.

464.2 Sacking Requirements

.21 *General.* Except where bundling or palletizing is authorized (see 464.3 and 464.4), packages must be sorted and sacked to destinations as outlined below. No more than 70 pounds of mail may be placed in any sack.

.22 Sortation

.221 Carrier Sacks. Mailers who wish to qualify for the level C piece rate (see 464.6), must prepare carrier route sacks. Carrier route sacks must be labeled in the following manner:

Line 1: City and State and 5-Digit Destination
Line 2: Contents (ORD P or NEWS), Carrier Route and Route Number
Line 3: Office of Mailing
Sample Carrier Sack Label:
SAN FRANCISCO CA 94133
NEWS-CARRIER ROUTE 18
PORTLAND OR 972

.222 *Five-digit Sacks.* When, after preparing optional carrier sacks, there are four or more packages addressed to the same 5-digit ZIP Code destination, packages must be made up into 5-digit sacks. Sacks containing fewer packages may be prepared. The sack must be labeled in the following manner:

Line 1: City and State and 5-Digit Destination
Line 2: Contents (ORD P or NEWS)
Line 3: Office of Mailing
Sample 5-Digit Sack Label:
PHILADELPHIA PA 19118
ORD P
BOSTON MA 021

.223 *Optional City Sacks.* After preparing 5-digit sacks, mailers are encouraged to make up packages addressed to the multi-ZIP Code cities listed in 464.114 into city sacks. The sack label must be labeled in the following manner:

Line 1: City, State, and Lowest ZIP Code
Line 2: Contents
Line 3: Office of Mailing
Sample City Sack Label:
AURORA IL 60504
NEWS
BOSTON MA 021

.224 *Three Digit Sacks.* When, after preparing optional carrier, 5-digit and optional city sacks, there are four or more packages for the same 3-digit ZIP Code destination, the packages must be made up into 3-digit sacks. Sacks containing fewer than four packages may be prepared. The sack must be labeled in the following manner:

Line 1: City, State, and 5-digit Prefix
Line 2: Contents
Line 3: Office of Mailing
Sample 3-digit Sack Label:
PHILADELPHIA PA 191
ORD P
BOSTON MA 021

.225 Optional SCF Sacks. After preparing 3-digit sacks, the mailer is encouraged to make up packages addressed to post offices in the same Sectional Center Facility service area into SCF sacks. The sacks must be labeled in the following manner:

Line 1: Name and State of SCF, Lowest 3-digit ZIP Code for that SCF
Line 2: Contents
Line 3: Office of Mailing
Sample SCF Sack Label:
SCF Philadelphia PA 190
ORD P
BOSTON MA 021

Note.—A list of all SCF's, the first three digits of all ZIP Codes served by these facilities, and the principal 3-digit ZIP Code prefixes that are to be used on SCF sack labels is contained in Publication 65, National ZIP Code and Post Office Directory.

.226. *SDC Sacks.* After preparing optional carrier, 5-digit, optional city, 3-digit and optional SCF sacks, the mailer is encouraged to make up packages addressed to the same State Distribution Center service area into SDC sacks. These sacks must be labeled in the following manner:

Line 1: Name of SDC for Destination Area
Line 2: Contents and State
Line 3: Office of Mailing
Sample Sack Label:
DIS PITTSBURGH PA 150
ORD P PA
SAN FRANCISCO CA 941

.227 State Sacks. When, after making up optional carrier, 5-digit, optional city, 3-digit, optional SCF, and optional SDC sacks, there are four or more packages addressed to the same State, the packages must be made up into state sacks. The sacks must be labeled in the following manner:

Line 1: Name of SDC for State of Destination
Line 2: Contents and State
Line 3: Office of Mailing
Sample State Sack Label:
DIS KANSAS CITY MO 640
ORD P MO
SAN FRANCISOC CA 941

.228 *Mixed States Sacks.* Packages remaining after state sacks have been prepared must be made up into mixed states sacks. The sacks must be labeled in the following manner:

Line 1: Mixed States Distribution Location
Line 2: Contents
Line 3: Office of Mailing
Sample Mixed States Sack Label:
DIS CHICAGO IL 606
ORD P MIXED STATES
CHICAGO IL 606

464.32d. Labeling. All bundles must be appropriately labeled on top to show destination and contents as required with sacks. Similarly, each separation within a bundle must be identified by labels in accordance with 464.14.

464.42b

Pallets must be made up to the destinations required in 464.2 when the mail load to a destination is either 650 pounds or three feet high. Pallets may also be prepared for the optional destinations described in 464.2. Pallets must not contain more than 2,000 pounds of mail or mail addressed to more than one zone.

464.6 Preparing Out-Of-County Rated Pieces (Levels B, C, and E).

There are several different piece rates provided for regular and science of agriculture publications which reflect the level of presort. Presort levels A, B and C are provided for mailings of 5,000 or more copies of Regular and Science of Agriculture publications being sent to destinations outside the county of

publication. Presort levels D and E are provided for mailings of less than 5,000 pieces of Regular and Science of Agriculture publications being sent to destinations outside the county of publication. Mailers using out-of-county per piece rates (regular rate and science of agriculture publications, see 411) must adhere to the following:

a. To qualify for the Level B or Level E piece rate, a piece must be: (1) In a 5-digit package of six or more pieces and the package must be inside a 5-digit sack, or (2) in a city package (see 464.114) or 3-digit package of six or more pieces addressed to a city having a unique 3-digit ZIP Code. The package must be inside a city sack or a 3-digit sack for a city with a unique 3-digit ZIP Code.

b. To qualify for the level C piece rate, a piece must be in a carrier route package of six or more pieces and the package must be inside a carrier route sack.

c. Pieces presented in bundles instead of sacks (see 464.3) may receive presort rates providing they meet all other requirements for the presort rates.

d. Mailers must be prepared to document or otherwise confirm the number of pieces mailed and paid for at levels B, C, and E piece rates. *Note.* This may be done in any of the following ways:

(1) By separating sacks paid at the various piece rates when they are presented for mailing, or

(2) By attaching to the mailing statement a list of the number of copies (and pieces) to each 5-digit ZIP Code, to each city having a unique 3-digit ZIP Code, to each city listed in 464.114, and to each carrier route for which level B, C, or E piece rates are being paid, or

(3) By maintaining records for each mailing which will confirm the number of pieces in qualifying 3-digit city, 5-digit, and carrier route sacks. The records must document the number of copies (and pieces) to each qualifying 3-digit city, 5-digit, and carrier route destination for which sacks are made up. A printout must be presented prior to the first mailing made under this arrangement. These records must be retained for at least two months.

e. The mailer must provide a copy of the record for a particular mailing, or portions of it, within 30 days of a request by the postmaster of the office of entry. Postmasters will advise the Region's Revenue Protection Program Manager of all publications being mailed under this arrangement. Acceptance units will maintain a list of publications authorized to mail under this arrangement.

f. More than one second-class publication may be combined to meet the volume per sack or bundle requirement for the Levels B, C, and E piece rates. To qualify for Levels B and C piece rates, at least 5,000 copies of each issue in the combined mailing must be mailed to destinations outside the county of publication. Listings and records provided by publishers in accordance with 464.6d must also document the number of combined pieces and copies of each publication mailed to each unique 3-digit city, 5-digit ZIP Code destination, and carrier route. The total number of consolidated mailing pieces for each level of presort is to be reported on the Form 3541 for one publication or on a separate Form 3541.

A notation such as "per piece charge for consolidated copies of *(title), (title),* etc." must be included on the Form 3541 on which the piece rates are computed. The Forms 3541 used to compute pound-rate postage for the individual publications must include a notation as to the number of copies included in the consolidated mailing pieces, and where the piece rate computations can be found (i.e., (number) copies sent in consolidated bundles and reported on the Form 3541 for *(title)*).

PART 562 Preparation

In 562 revise 562.31 to read as follows:

562.31 Addressing

.31 Each piece including the top copy of a firm package (see 564.12) must bear the name and address of the subscriber. The address must include the ZIP Code. Exception: the ZIP Code may be omitted from pieces bearing a simplified address in accordance with 122.41.

Part 564 Presort Requirements

In 564, revise 564.1, 564.2, 564.32d and 564.42b to read as follows; renumber 564.13 as 564.12, 564.18 as 564.13 and 564.19 as 564.14:

564 Presort Requirements (See Exhibit 564)

564.1 Packaging Requirements

.11 Sortation

.111 Firm Packages. When there are two or more copies for the same address they must be made up into one package if only one piece rate is paid for the group. Affix blue label F (see 464.19). When there is more than one package sent to one address, mailers are allowed to include a package identification notice such as 1 of 4, 2 of 4, etc., on the package wrapper, provided such endorsement does not interfere with the clarity of the address.

.112 Optional Carrier Packages. When there are six or more copies for the same carrier route, rural route, lockbox section or general delivery unit, they may, at the mailer's option, be made up into carrier packages of six or more copies. When a carrier route package is not placed in a sack labeled to show that it only contains packages for the same carrier route, a facing slip, marked as shown below, must be affixed to the front of the package.

Line 1: 5-Digit ZIP Code of Address
Line 2: Contents and Carrier Route, Rural Route, Lockbox Section, or General Delivery Unit
Line 3: Post Office of Entry
Sample Carrier Route Facing Slip:
SAN FRANCISCO CA 94133
ORD P RURAL ROUTE 12
PORTLAND OR 972

.113 5-Digit Packages. When there are six or more copies for the same 5-digit ZIP Code destination, they must be made up into 5-digit packages. Mailers are encouraged to, but are not required to affix red label D.

.114 Optional City Packages. When, after making up 5-digit packages, there are six or more copies remaining for one of the following multi-ZIP Coded offices, the mailer is encouraged to prepare a "city" package. A yellow label C must be affixed to city packages.

.115 Three-Digit Packages. When there are six or more copies for a 3-digit ZIP Code prefix, after the required 5-digit packages and optional city packages have been made, they must be made up into 3-digit packages. A green label 3 must be affixed to the package.

.116 Optional SCF Packages. When there are six or more copies for post offices in the same sectional center facility delivery area remaining after the required 5-digit and 3-digit packages have been made, the mailer is encouraged to prepare a Sectional Center Facility package. A green label 3 must be affixed to the packages. A list of all SCF's, the first three digits of all ZIP Codes served by these facilities, and the lowest 3-digit ZIP Codes that are to be used on SCF sack labels is shown in the "Sectional Center Facilities" table contained in Publication 65, *National ZIP Code and Post Office Directory.*

.117 Optional SDC Packages. When there are six or more copies for post offices in the same State Distribution Center (SDC) Service Area remaining after the 5-digit, city, 3-digit or SCF packages have been made, the mailer is encouraged to prepare a State Distribution Center Service Area Package. In those instances where this State Distribution Center Service Area makeup is finer than the mandatory

state makeup, use a facing slip on those packages. Individual copies in these packages must be wrapped.

.118 State Packages. When there are six or more copies for a state remaining after the 5-digit, city, 3-digit, SCF or State Distribution Center Service Area packages have been made, they must be made up into state packages. An orange label S must be affixed to the packages. Individual copies in these packages must be wrapped.

.119 Mixed State Packages. Copies remaining after packages have been made, as outlined above, must be made up into mixed state packages. A mixed state white facing slip must be attached to the packages. Individual copies in mixed state packages must be wrapped.

564.2 Sacking Requirements

.21 *General.* Except where bundling or palletizing in lieu of sacks is authorized, packages must be sorted and sacked to destinations as outlined below. No more than 70 pounds of mail may be placed in any sack.

.22 *Sortation*

.221 *Carrier Sacks.* Mailers are encouraged to prepare carrier route sacks. Carrier route sacks must be labeled in the following manner:

Line 1: City and State and 5-Digit Destination
Line 2: Contents (ORD P or News), Carrier Route and No.
Line 3: Office of Mailing
Sample Carrier Sack Label:
SAN FRANCISCO CA 94133
CARRIER ROUTE 18
PORTLAND OR 972

.222 *Five-Digit Sacks.* When, after preparing carrier sacks, there are four or more packages addressed to the same 5-digit destination, packages must be made up into 5-digit sacks. Sacks containing fewer packages may be prepared. The sack must be labeled in the following manner:

Line 1: City and State and 5-Digit Destination
Line 2: Contents (ORD P or News)
Line 3: Office of Mailing
Sample 5-Digit Sack Label:
PHILADELPHIA PA 19118
ORD P
BOSTON MA 021

.223 *Optional City Sacks.* After preparing 5-digit sacks, mailers are encouraged to make up packages addressed to the cities listed in 464.114 into city sacks. The sack must be labeled in the following manner:

Line 1: City, State, and Lowest ZIP Code
Line 2: Contents
Line 3: Office of Mailing
Sample City Sack Label:
AURORA IL 60504
ORD P
BOSTON MA 021

.224 *Three-Digit Sacks.* When, after preparing 5-digit and optional city sacks, there are four or more packages for the same 3-digit ZIP Code destination, the packages must be made up into 3-digit sacks. Sacks containing fewer than four packages may be prepared. The sack must be labeled in the following manner:

Line 1: City, State and 3-digit Prefix
Line 2: Contents
Line 3: Office of Mailing
Sample 3-Digit Sack Label:
PHILADELPHIA PA 191
ORD P
BOSTON MA 021

.225 *Optional SCF Sacks.* After preparing 3-digit sacks, the mailer is encouraged to make up packages addressed to post offices in the same Sectional Center Facility delivery area into Sectional Center Facility sacks. The sacks must be labeled in the following manner:

Line 1: Name and State of SCF, lowest 3-digit ZIP Code for that SCF
Line 2: Contents
Line 3: Office of Mailing
Sample SCF Sack Label:
SCF PHILADELPHIA PA 190
ORD P
BOSTON MA 0121

.226 *Optional SDC Sacks.* After preparing 5-digit, city, 3-digit or SCF sacks, the mailer is encouraged to make up packages addressed to the same State Distribution Center Service Area into State Distribution Center Service Area sacks. These sacks must be labeled in the following manner:

Line 1: Name of State Distribution Center for Destination Area
Line 2: Contents and State
Line 3: Office of Mailing
Sample Sack Label:
DIS PITTSBURGH PA 150
ORD P PA
SAN FRANCISCO CA 940

.227 *State Sacks.* When, after making up 3-digit, 5-digit, city, SCF or State Distribution Center Service Area Sacks, there are four or more packages addressed to the same state, the packages must be made up into state sacks. The sacks must be labeled in the following manner:

Line 1: Name of State Distribution Center for State of Destination
Line 2: Contents and State
Line 3: Office of Mailing
Sample State Sack Label:
DIS KANSAS CITY MO 640
ORD P MO
SAN FRANCISCO CA 940

.228 *Mixed States Sacks.* Packages remaining after state sacks have been prepared must be made up into mixed states sacks. The sacks must be labeled in the following manner:

Line 1: Mixed States Distribution Location
Line 2: Contents
Line 3: Office of Mailing
Sample Mixed States Sack Label:
DIS CHICAGO IL 606
ORD P MIXED STATES
CHICAGO, IL 606

.564.42b Pallets must be made up to the destinations required in 564.2 when the mail load to a destination is either 650 pounds or three feet high. Pallets may also be prepared for the optional destinations described in 564.2. Pallets must not contain more than 2,000 pounds of mail.

PART 661 Addressing

In 661, revise 661.2 to read as follows:
661.2 Each piece including the top copy of a firm package (see 663.121a) must bear the name and address of the subscriber. The address must include the ZIP Code. Exception: the ZIP Code may be omitted from pieces bearing a simplified address in accordance with 122.41.

PART 663 Preparation of Bulk Rate Mailings (Third-Class)

In 663, revise 663.1, 663.2, and 663.42 to read as follows: renumber 663.117 as 663.122 and 663.118 as 663.123:

663.1 Standard Preparation Requirements

.11 *General.* All bulk Third-Class mailings other than machinable parcels, as defined in 128, must be prepared in accordance with the following standard preparation requirements.

.12 *Packaging Requirements*

.121 Sortation

a. *Firm Packages.* When all mail in a package is for an individual firm, affix blue label F.

b. *Five-digit Packages.* When there are ten or more pieces for the same 5-digit ZIP Code destination, they must be made up into 5-digit packages. The mailer may package less than 10 pieces in the same manner. Mailers are encouraged to, but are not required to, affix red label D.

c. *Optional City Packages.* When, after making up 5-digit packages, there are pieces for one of the multi-ZIP Coded offices listed in 464.114, the mailer is encouraged to prepare a "city" package. A yellow label C must be affixed to such packages.

d. *Three-digit Packages.* When there are ten or more pieces for a 3-digit ZIP Code prefix, after the required 5-digit packages and optional city packages

have been made, they must be made up into 3-digit packages. The mailer package less than 10 pieces in the same manner. A green label 3 must be affixed to the package.

e. *Optional SCF Packages.* When there are pieces for post offices in the same Sectional Center Facility delivery area remaining after the required 5-digit and 3-digit packages and the optional city packages have been made, the mailer is encouraged to prepare an SCF package. A green label 3 must be affixed to the packages. A list of all Sectional Center Facilities, the first three digits of all ZIP Codes served by these facilities, and the lowest 3-digit ZIP Codes that are to be used on Sectional Center Facility sack labels is shown in the "Sectional Center Facilities" table contained in Publication 65, *National ZIP Code and Post Office Directory.*

f. *Optional SDC Packages.* When there are pieces for post offices in the same State Distribution Center Service Area remaining after the 5-digit, city, 3-digit or SCF packages have been made, the mailer is encouraged to prepare a State Distribution Center Service Area Package. In those instances where this State Distribution Center Area makeup is finer than the mandatory state makeup, use a facing slip on these packages.

g. *State Packages.* When there are ten or more copies for a state remaining after the 5-digit, city, 3-digit SCF or State Distribution Center Service Area packages have been made, they must be made up into state packages. The mailer may package less than 10 pieces in the same manner. An orange label S must be affixed to the package.

h. *Mixed State Packages.* Pieces remaining after packages have been made as outlined above must be made up into mixed state packages. A mixed state white facing slip must be attached to the packages.

.13 *Sacking Requirements*

.131 General. Except where bundling or palletizing is authorized, packages must be sorted and sacked to destinations as outlines below. No more than 70 pounds of mail may be placed in any sack.

.132 Sortation

a. Five-Digit Sacks. When there are twelve or more packages addressed to the same 5-digit destination, packages must be made up into 5-digit sacks. Sacks containing fewer packages may be prepared. The sack must be labeled in the following manner:

Line 1: City and State and 5-Digit Destination
Line 2: Contents
Line 3: Office of Mailing
Sample 5-Digit Sack Label:
PHILADELPHIA PA 19118
3C FLATS
BOSTON MA 021

b. Optional City Sacks. When, after preparing 5-digit sacks, there are packages addressed to the cities listed in section 464.114, the packages may, at the mailer's option, be made up into sacks. The sack must be labeled in the following manner:

Line 1. City, State and Lowest ZIP Code
Line 2: Contents
Line 3: Office of Mailing
Sample City Sack Label:
AURORA IL 60504
3C LTRS
BOSTON MA 021

c. Three-Digit Sacks. When, after preparing 5-digit and optional city sacks, there are twelve or more packages for the same 3-digit ZIP Code destination, the packages must be made up into 3-digit sacks. Sacks containing fewer than twelve packages may be prepared. The sack must be labeled in the following manner:

Line 1: City, State and 3-Digit Sack Label
Line 2: Contents
Line 3: Office of Mailing
Sample 3-Digit Sack Label:
PHILADELPHIA PA 191
3C FLATS
BOSTON MA 021

d. Optional SCF Sacks. When after preparing 5-digit, optional city, and 3-digit sacks, there are packages addressed to post offices in the same Sectional Facility delivery area, the packages may be made up into Sectional Center Facility sacks at the mailer's option. The sacks must be labeled in the following manner:

Line 1: Name and State of SCF, Lowest 3-Digit ZIP Code for that SCF
Line 2: Contents
Line 3: Office of Mailing
Sample SCF Sack Label:
SCF PHILADELPHIA PA 190
3C FLATS
BOSTON MA 021

e. SDC Sacks. After preparing 5-digit, city, 3-digit or SCF sacks, the mailer is encouraged to make up packages addressed to the same State Distribution Center Service Area into State Distribution Center Service Area sacks. These sacks must be labeled in the following manner:

Line 1: Name of State Distribution Center for Destination Area
Line 2: Contents and State
Line 3: Office of Mailing
Sample Sack Label:
DIS PITTSBURGH PA 150
ORD P PA
SAN FRANCISCO CA 941

f. State Sacks. When after making up 5-digit, optional city, 3-digit and optional SCF and SDC sacks, there are twelve or more packages addressed to the same state, the packages must be made up into state sacks. Sacks containing fewer than twelve packages may be prepared. The sacks must be labeled in the following manner:

Line 1: Name of State Distribution Center for State of Destination
Line 2: Contents and State
Line 3: Office of Mailing
Sample Sack Label:
DIS KANSAS CITY MO 640
3C LTRS
SAN FRANCISCO CA 941

g. Mixed State Sacks. Packages remaining after state sacks have been prepared must be made up into mixed state sacks. The sacks must be labeled in the following manner:

Line 1: Mixed States Distribution Location
Line 2: Contents
Line 3: Office of Mailing
Sample Mixed States Sack Label:
DIS CHICAGO ILL 606
3C LTRS MX STATES
CHICAGO IL 606

h. Loose Pack Sack. The term "loose pack sack" refers to the placement of unbundled, unbound mail pieces in a receptacle such as a mail sack. Management Sectional Center (MSC) managers may authorize mailers to "loose pack" pieces in full No. 3 sacks without bundling when all material in a sack would normally be "worked" at the point where the sack is opened, e.g., if a 3-digit sack contains no more than nine pieces for any one 5-digit destination. Pieces must be placed to maintain orientation of the pieces while in transit. Mailers desiring to loose pack pieces must request authorization through the post office of mailing.

663.2 Machinable Parcel Preparation Requirements

.21a. General. Machinable parcels as defined in 128 must be prepared in accordance with the following preparation requirements.

.22b. Sacking Requirements

.221 Five-Digit Sacks. When there are 20 pounds or 1,000 cubic inches of material addressed to the same 5-digit ZIP Code area, they must be placed in 5-digit sacks. These sacks must be labeled in the following manner:

Line 1: City, State and 5-Digit Destination
Line 2: Contents
Line 3: Mailer, Office of Mailing
Sample 5-Digit Sack Label:
PHILADELPHIA PA 19118

3C MACH P
JC COMPANY BOSTON MA 021

.222 Destination Bulk Mail Center (BMC) Sacks. After the required 5-digit ZIP Code area sacks have been prepared, the remaining pieces must be placed in sacks labeled to destination BMC delivery areas, when there are 20 pounds or 1,000 cubic inches of material to a BMC delivery area. These sacks must be labeled in the following manner:

Line 1: Destination BMC
Line 2: Contents
Line 3: Mailer, Office of Mailing
Sample BMC Sack Label:
BMC CHICAGO IL 608
3C MACH P
RD MAILINGS ATLANTA GA 303

.223 Origin BMC Sacks. After the required 5-digit ZIP Code area and destination BMC sacks have been prepared, the remaining pieces must be placed in sacks lableled to the origin BMC in the following manner:

Line 1: Origin BMC
Line 2: Contents
Line 3: Mailer, Office of Mailing
Sample Origin BMC Sack Label:
BMC KANSAS CITY MO 643
3C MACH P
WRIGHT CO TOPEKA KS 666

663.42 Palletizing Requirements

663.421 Standard Preparation Requirements

a. *General*

All palletized bulk third-class mailings other than machinable parcels as defined in 128, must be prepared in accordance with the following standard preparation requirements.

b. *Packages*

Mailers must presort pieces and prepare packages as prescribed in 663.1. The Regional Postmaster General may waive packaging requirements for 5-digit pallets when mailers effectively demonstrate they will prepare pallets to remain intact to the destinations.

c. *Pallets*

Pallets must be made up to the destinations in 663.2 when the mail load to a destination is either 650 pounds or three feet high. Pallets may also be prepared for the optional destinations described in 663.2. Pallets must not contain more than 2,000 pounds of mail.

.422 Machinable Parcel Preparation Requirements Pallets must be made up to the destinations described in 663.2 when the mail load to a destination is either 650 pounds or three feet high. Pallets must not contain more than 2,000 pounds of mail.

PART 724 What May Be Mailed At Special Fourth-Class Rates

In 724, revise 724.22 to read as follows:

.22 Qualification for Presort Rates

.221 *General Requirements*

a. A mailing will receive only one level of presort rate. A mailer may, however, divide a mailing into two or more mailings with separate mailing statements to use both levels of presort rates.

b. The size and content of each piece need not be identical.

c. No more than 70 pounds may be placed in any sack.

.222 *Level A Presort Rate*

a. To qualify as a presorted piece subject to the special fourth-class presort level A rate, a piece must be one of a mailing of at least 500 pieces of identical weight receiving identical service, properly prepared and presented in sacks destined for 5-digit ZIP Code locations. Each sack must contain at least 8 pieces or 20 pounds, or 1,000 cubic inches of mail.

b. Mailing of at least 500 identical weight outsides, as described in 128, may qualify for presort level A if they are made up to preserve the 5-digit ZIP Code presort as prescribed by the postmaster of the office of mailing. The postmaster may require notification up to 24 hours before the mailing is presented. The mailer must comply with the postmaster's instructions on how to separate and present mailings of outsides. The postmaster will coordinate such mailings and obtain procedures for separation of parcels through the regional logistics office.

.223 *Level B Presort Rate*

a. To qualify as a presorted piece subject to the special fourth-class presort level B rate, a piece must be one of a mailing of at least 2,000 identical weight sackable pieces receiving identical service, properly prepared and presorted to 5-digit and BMC destinations if they are machinable, or to 5-digit and 3-digit destinations if they are not machinable.

b. Four or more pieces to the same 5-digit destination must be made up into 5-digit sack.

c. Parcels remaining after performing the 5-digit sort must be sorted to 3-digit ZIP Code destinations if the parcels are non-machinable, as defined in 128, or to destination BMC's if they are machinable. BMC and 3-digit sacks must contain at least four pieces, or 20 pounds, or 1,000 cubic inches of mail to qualify for the level B rate.

d. Pieces which are not made up to 5- or 3-digit ZIP Codes, or to BMC destinations are not considered presorted and do not qualify for level A or B rates. They must be presented for mailing under a separate mailing statement if mailed under a permit imprint.

PART 763 Preparation of Bound Printed Matter

In 763, revise 763.2, 763.3 and 763.62 to read as follows:

763.2 STANDARD PREPARATION REQUIREMENTS

.21 *General.* All bulk rate bound printed matter other than machinable parcels, as defined in 128, must be prepared in accordance with the following standard preparation requirements. Except where bundling or palletizing in lieu of sacking is authorized, pieces must be sorted and sacked to destinations as outlined below. No more than 1 zone or 70 pounds of mail may be placed in any sack.

.22 *Sortation.*

.221 *Five-Digit Sacks.* When there are 10 pieces, 20 pounds or 1,000 cubic inches of material addressed to the same 5-digit destination, those pieces must be made up into 5-digit sacks. Sacks containing smaller quantities may be prepared. The sack must be labeled in the following manner:

Line 1: City and State and 5-Digit Destination
Line 2: Contents:
Line 3: Office of Mailing
Sample 5-Digit Sack Label:
PHILADELPHIA PA 19118
4C FLATS
BOSTON MA 021

.222 *Optional City Sacks.* When after preparing 5-digit sacks, there are 10 pieces, 20 pounds or 1,000 cubic inches of material addressed to the cities listed in section 464.114, the mailer is encouraged to make up the pieces into city sacks. Sacks containing smaller quantities may be prepared. The sack must be labeled in the following manner:

Line 1: City, State and Lowest ZIP Code
Line 2: Contents
Line 3: Office of Mailing
Sample City Sack Label:
AURORA IL 60504
4C IRREG
BOSTON MA 021

.223 *Three-Digit Sacks.* When, after preparing 5-digit and optional city sacks, there are 10 pieces, 20 pounds or 1,000 cubic inches of material for the same 3-digit ZIP Code destination, the pieces must be made up into 3-digit sacks. Sacks containing smaller quantities may

be prepared. The sack must be labeled in the following manner:

Line 1: City, State and 3-digit Prefix
Line 2: Contents
Line 3: Office of Mailing
Sample 3-digit Sack Label
PHILADELPHIA PA 191
4C IRREG
BOSTON MA 021

.224 *Optional SCF Sacks.* When after preparing 3-digit sacks, there are 10 pieces, 20 pounds or 1,000 cubic inches of material addressed to post offices in the same Sectional Center Facility delivery area, the mailer is encouraged to make up pieces into SCF sacks. A list of all Sectional Center Facilities, the first three digits of all ZIP Codes served by these facilities, and the lowest 3-digit ZIP Codes that are to be used on SCF sack labels, is shown in the "Sectional Center Facilities" table contained in Publication 65, *National ZIP Code and Post Office Directory.* The sacks must be labeled in the following manner:

Line 1: Name and State of SCF, Lowest 3-Digit ZIP Code for that SCF
Line 2: Contents
Line 3: Office of Mailing
Sample SCF Sack Label:
SCF PHILADELPHIA PA 190
4C FLATS
BOSTON MA 021

.225 Optional SDC Sacks. After preparing 5-digit, city, 3-digit, or SCF sacks, the mailer is encouraged to make up packages addressed to the same State Distribution Center Service Area into State Distribution Center Service Area sacks. These sacks must be labeled in the following manner:

Line 1: Name of State Distribution Center for Destination Area
Line 2: Contents and State
Line 3: Office of Mailing
Sample Sack Label:
DIS PITTSBURGH PA 150
3C LTRS
SAN FRANCISCO CA 941

.226 State Sacks. When after making up 5-digit, city 3-digit, SCF, and SDC sacks, there are 10 pieces, 20 pounds or 1,000 cubic inches of material addressed to the same state, those pieces must be made up into state sacks. The sacks must be labeled in the following manner:

Line 1: Name of State Distribution Center for State of Destination
Line 2: Contents and State
Line 3: Office of Mailing
Sample of Sack Label:
DIS KANSAS CITY MO 640
4C IRREG
SAN FRANCISCO CA 941

.227 Mixed State Sacks. Pieces remaining after state sacks have been prepared must be made up into mixed state sacks. The sacks must be labeled in the following manner:

Line 1: Mixed States Distribution Location
Line 2: Contents
Line 3: Office of Mailing
Sample Mixed States Sack Label:
DIS CHICAGO IL 606
4C IRREG
CHICAGO IL 606

763.3 Machinable Parcel Preparation Requirements

.31 General. Machinable parcels, as defined in 128, must be prepared in accordance with the following sacking requirements. No more than 1 zone of 70 pounds of mail may be placed in any sack.

.32 Sortation

.321 Five-Digit Sacks. When there are 10 pieces, 20 pounds, or 1,000 cubic inches of material addressed to the same 5-digit ZIP Code area, they must be placed in 5-digit sacks. These sacks must be labeled in the following manner:

Line 1: City, State and 5-Digit Destination
Line 2: Contents
Line 3: Mailer, Office of Mailing
Sample 5-Digit Sack Label:
PHILADELPHIA PA 19118
4C MACH
JC COMPANY BOSTON MA 021

.322 Destination Bulk Mail Center (BMC) Sacks. After the required 5-digit ZIP Code area sacks have been prepared, the remaining pieces must be placed in sacks labeled to destination BMC areas, when there are 10 pieces, 20 pounds, or 1,000 cubic inches of material to a BMC area. These sacks must be labeled in the following manner:

Line 1: Destination BMC
Line 2: Contents
Line 3: Mailer, Office of Mailing
Sample BMC Sack Label:
BMC CHICAGO IL 608
4C MACH
RD MAILINGS ATLANTA GA 303

.323 Origin BMC Sacks. After the required 5-digit ZIP Code area and destination BMC sacks have been prepared, the remaining pieces must be placed in sacks labeled to the origin BMC in the following manner:

Line 1: Origin BMC
Line 2: Contents
Line 3: Mailer, Office of Mailing
Sample Origin BMC Sack Label:
BMC KANSAS CITY MO 643
4C MACH
WRIGHT CO TOPEKA KS 666

763.62 Palletizing Requirements

.621 Standard Preparation Requirements

General. All palletized bulk rate bound printed matter, other than machinable parcels as defined in 128, must be prepared in accordance with the following preparation requirements:

a. Bundles—Bundles must be made up to the required destinations in 763.2 when there are 10 pieces or 20 pounds for a destination. Mailers are encouraged to prepare bundles for the optional destinations described in 763.2. The Regional Postmaster General may waive bundling requirements for 5-digit pallets when mailers effectively demonstrate they will prepare pallets to remain intact to the destination.

b. Pallets—Pallets must be made up to the destinations in 763.2 when the mail load to a destination is either 650 pounds or three feet high. Pallets may also be prepared for the optional destinations in 763.2. Pallets must not contain more than one zone and 2,000 pounds of mail.

.622 Machinable Parcel Preparation Requirements

Pallets must be made up to the destinations in 763.2 when the mail load to a destination is either 650 pounds or three feet high. Pallets must not contain more than one zone and 2,000 pounds of mail.

PART 764 Preparation of Special Fourth-Class Presort Rate Mail

In 764, revise 764.22, 764.23 and 764.3 to read as follows:

.22 Level A Presort Rate Mailings

a. Regular parcels, 5-digit destination
Line 1: City, State, 5-Digit ZIP Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
CLEVELAND OH 44101
4C MACH
J COMPANY BOSTON MA 021

b. Irregular parcels, 5-digit destination
Line 1: City, State, 5-Digit ZIP Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
CLEVELAND OH 44101
4C IRREG
J COMPANY BOSTON MA 021

.23 Level B Presort Rate Mailings

a. Machinable parcels, 5-digit destination
Line 1: City, State, 5-Digit ZIP Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
CLEVELAND OH 44101
4C MACH
J COMPANY BOSTON MA 021

b. Machinable parcels, 3-digit destination
Line 1: BMC, State, BMC Code
Line 2: Class, Contents, 3-Digit ZIP Code Prefix of Contents
Line 3: Mailer, Mailer Location
Sample:
BMC PITTSBURGH PA 152
4C MACH
J COMPANY BOSTON MA 021
c. Irregular parcels, 5-digit destination
Line 1: City, State, 5-Digit ZIP Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
CLEVELAND OH 44101
4C IRREG
J COMPANY BOSTON MA 021
d. Irregular parcels, 3-digit destination
Line 1: City, State, 3-Digit ZIP Code Prefix
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
CLEVELAND OH 441
4C IRREG
J COMPANY BOSTON MA 021

Or

CLEVELAND OH 440
4C IRREG
J COMPANY BOSTON MA 021

764.3 Container or Pallet Labelling

.31 General. Containers and pallets must be labeled by mailers in accordance with the criteria in 128 as illustrated in the samples shown in 764.32 through 764.34.

.32 Level A Presort Rate Mailings

a. Machinable parcels, 5-digit destination
Line 1: City, State, 5-Digit ZIP Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
CLEVELAND OH 44101
4C MACH
J COMPANY BOSTON MA 021
b. Irregular parcels, 5-digit destination
Line 1: City, State, 5-Digit ZIP Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
CLEVELAND OH 44101
4C IRREG
J COMPANY BOSTON MA 021
c. Outside parcels, 5-digit destination
Line 1: City, State, 5-Digit ZIP Code
Line 2: Class Contents
Line 3: Mailer, Mailer Location
Sample:
CLEVELAND OH 44101
4C OUTS
J COMPANY BOSTON MA 021

.33 Level B Presort Rate Mailings Mailed

a. Machinable parcels, 5-digit destination
Line 1: City, State, 5-Digit ZIP Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
CLEVELAND OH 44101
4C MACH
J COMPANY BOSTON MA 021
b. Machinable parcels, 3-digit destination
Line 1: BMC, State, BMC Code
Line 2: Class, Contents, 3 Digit-ZIP Code Prefix of Contents
Line 3: Mailer, Mailer Location
Sample:
BMC PITTSBURGH PA 152
4C MACH
J COMPANY BOSTON MA 021
c. Irregular parcels, 5-digit destination
Line 1: City, State, 5-Digit ZIP Code Prefix
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample
CLEVELAND OH 44101
4C IRREG
J COMPANY BOSTON MA 021
d. Irregular parcels, 3-digit destination
Line 1: City, State, 3-Digit ZIP code Prefix
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample
CLEVELAND OH 441
4C IRREG
J COMPANY BOSTON MA 021

Or

SCF CLEVELAND OH 440
4C IRREG
J COMPANY BOSTON MA 021
e. Outside parcels, 5-digit destination
Line 1: City, State, 5-Digit ZIP Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample
CLEVELAND OH 44101
4C OUTS
J COMPANY BOSTON MA 021
f. Outside parcels, 3-digit destination
Line 1: City, State, 3-Digit ZIP Code Prefix
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample
CLEVELAND OH 441
4C OUTS
J COMPANY BOSTON MA 021

Or

SCF CLEVELAND OH 440
4C OUTS
J COMPANY BOSTON MA 021

Part 765 Preparation of Library Rate Materials

Revise 765 to read as follows:

When 1,000 or more pieces of identical weight are mailed at the library rates (see 711.4) during a single day, they must be presorted and placed in sacks under the instructions contained in 764.23.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposals are adopted.

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ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1281-2]

Approval and Promulgation of Implementation Plans; Arkansas Plan for Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes approval/disapproval of various revisions to the Arkansas State Implementation Plan (SIP). The revisions were submitted by the Governor to fulfill the requirements of the Clean Air Act, as amended in August 1977 (the Act), for attainment of National Ambient Air Quality Standards. The revisions being acted on today are those relating to the plan requirements for nonattainment areas (Part D of the Act) and address control requirements for volatile organic compounds (VOCs). In reviewing the State submittal, EPA assessed the ability of the plan to meet the requirements of Part D.

While the plan meets the Part D requirements in many respects, there are several deficiencies that the State needs to address before full SIP approval can be granted by the Administrator of EPA.

DATES: Interested persons are invited to submit comments on this proposed action on or before October 1, 1979.

ADDRESSES: Written comments should be submitted to the address below: Environmental Protection Agency, Region 6, Air and Hazardous Materials Division, Air Program Branch, 1201 Elm Street, Dallas, Texas 75270, ATTN: Jerry Stubberfield.

Copies of the State's submittal are available for inspection during normal business hours at the address above and at the following locations:

Environmental Protection Agency, Public Information Reference Unit, Room 2922, EPA Library, 401 M Street, S.W., Washington, D.C. 20460.
Arkansas Department of Pollution, Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209.

FOR FURTHER INFORMATION CONTACT:
Jerry Stubberfield, Chief, Implementation Plan Section, Environmental Protection Agency, Region 6, Air and Hazardous Materials Division, Air Program Branch, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2742.

SUPPLEMENTARY INFORMATION:
Provisions of the 1977 Clean Air Act Amendments (the Act) require states to revise their State Implementation Plans (SIPs) for all areas that have been designated as not attaining the National Ambient Air Quality Standards (NAAQS). The Act requires that states submit the necessary plan revisions to the EPA by January 1, 1979. The requirements for an approvable SIP are described in a general preamble published in the April 4, 1979, Federal Register (44 FR 20372), and will not be restated in this notice. A supplement to the April 4 notice was published on July 2, 1979 (44 FR 38583) involving among other things, conditional approval.

EPA proposes to conditionally approve the plan where there are minor deficiencies and the State provides assurances that it will submit corrections by a specified deadline. This notice solicits comment on what items should be conditionally approved, and it solicits comments on the deadlines where specified in this notice. A conditional approval will mean that the restrictions on new major source construction will not apply unless the State fails to submit the necessary SIP revisions by the scheduled dates, or unless the revisions are not approved by EPA.

The Governor of Arkansas, after adequate notice and public hearing, submitted revisions to Arkansas' SIP on April 4, 1979. The overall plan was developed by the Arkansas Air Pollution Control Division. The revisions include provisions for attainment of the NAAQS for ozone, in the designated nonattainment areas. These provisions address Part D (Plan Requirements for Nonattainment Areas) of the Act. In addition, the State submittal included provisions relating to other parts of the Act. The action being taken today by EPA is only with respect to Part D requirements. Those SIP provisions relating to requirements of the Act other than Part D will be addressed in a later Federal Register. An evaluation report,[1] which reviews the SIP in detail, is available for inspection by interested parties during normal business hours at the above stated addresses.

PART D—SIP REQUIREMENTS

Ozone

In the March 3, 1978 Federal Register, at 43 Fed. Reg. 8969, the EPA identified Pulaski County, Arkansas as a nonattainment area for photochemical oxidants (ozone) in accordance with Section 107 of the Act. The geographic area of nonattainment is Pulaski County which includes the Little Rock metropolitan area. The ozone design value for Little Rock is 0.16 parts per million (ppm). The State elected to use the modified rollback model to determine the amount of VOC reductions required to show attainment of the NAAQS.

Present transport (T_o) and future transport (T_f) values of 0.12 ppm. and 0.08 ppm were used with an additivity factor of 0.5 to calculate the reductions. The reduction necessary for Pulaski County to demonstrate attainment of the ozone standard is 20 percent. Use by the State of the modified rollback model, present and future transport values, and the additivity value are consistent with EPA guidance.

The emission inventory data provided in the SIP was developed by an EPA contractor [2] and is considered adequate to meet the requirements of the Act. Base year (1977) emission inventory summaries and 1982 emission projections are provided, by VOC source category, for Pulaski County. The 1982 emissions projections provide a growth rate for area and mobile sources. The plan points out however, that for point sources (i.e., sources having potential emissions of VOC greater than 100 tons per year) a growth rate of 1.0 is assumed. The no growth projection in major VOC sources is claimed based upon the fact that permit data for the past 10 years indicates virtually no growth for VOC sources. By the present contribution of point source emissions (6 percent) relative to the total VOC emissions, this assumption does not appear to be unreasonable.

In addition to requiring a current emissions inventory, the Act and subsequent EPA guidance also requires that the State provide for annual reporting of emission reductions so as to evidence reasonable further progress (RFP). The Arkansas agency has committed to provide EPA with such information in their regular reporting schedule. Their present reporting schedule with respect to providing information on emission inventory data is semi-annual. This will be sufficient to meet the annual reporting requirement.

The control strategy submitted by the State of Arkansas is based on emission reductions achieved through the application of reasonably available control technology (RACT) to existing major stationary sources consistent with Control Technique Guidelines (CTGs) and the Federal Motor Vehicle Control Program (FMVCP). The State has committed to adopt additional VOC control measures consistent with CTGs published after January 1, 1978, for applicable major sources and has also committed to adopt regulations for source categories not included on EPA's CTG lists, but for which the Arkansas Air Pollution Control Commission determines that RACT exist.

In applying controls to stationary sources of VOC and accounting for mobile source reductions, the State's control strategy demonstrates an overall 26.5 percent reduction in VOC emissions. This overall reduction is comprised of a 4.7 percent reduction from the application of RACT to stationary sources and a 21.9 percent reduction credited to the FMVCP.

According to the State's demonstration the reduction from the FMVCP will be 21.9 percent. EPA's MOBILE 1 computer model was used to calculate vehicle emissions for 1977 and 1982 with input data used in the model being supplied by the Arkansas State Highway and Transportation Department.

The reductions claimed in the State's control strategy are considered by EPA to be adequate to demonstrate attainment. In addition to demonstrating attainment the Plan graphically sets forth a reasonable further progress line which indicates the rate at which total emissions will be reduced from 1977 to 1982. This linear reduction rate depicted in the plan is to be achieved through the application of RACT regulations and the FMVCP. Reductions claimed through these programs, included with the State commitment to adopt regulations for future CTG categories and to adopt additional regulations for non-CTG categories, should be more than sufficient to meet the requirement of RFP.

The Arkansas "Regulations for the Control of Volatile Organic Compounds" specify both emission limits and permitting requirements. The permitting

[1] EPA Review of Arkansas State Implementation Plan Revision, June 1979.
[2] TRW Environmental Engineering Division, Vienna, Virginia.

requirements will be discussed elsewhere in this notice.

The Arkansas emission limitations for VOC sources apply to gasoline storage and marketing, petroleum liquid storage and cutback asphalt. The State has demonstrated that through the application of these regulations an additional 4.7 percent reduction in hydrocarbon emissions can be obtained. These reductions are in excess of the reductions needed, therefore, EPA proposes to approve these regulations. EPA points out, however, that the definition for VOC compounds (i.e., compounds having a vapor pressure greater than 78 millimeters of Hg) is inconsistent with the EPA's definition. In order to be approvable, the State would have to modify their definition of VOC compounds should they adopt and submit additional hydrocarbon regulations.

The control requirements specified in the Arkansas regulations address only a portion of the source categories for which CTG documents have been specified. The Arkansas regulations do not specify requirements for surface coating operations for auto and light trucks, cans, paper, fabric, metal furniture, large appliances, magnet wire and coils. Nor were requirements specified for petroleum refinieries and degreasing.

In order to meet the requirements of Section 172(b)(2) the State must adopt and submit regulations consistent with the CTG's for the above described source categories applicable to sources which have a potential to emit 100 tons or more per year of VOC. The exception to this requirement is a certification by the State that no major sources applicable to a specific RACT regulation exist within the nonattainment area.

It appears, based upon a review of source categories shown in the emission inventory summary, that the majority of non-regulated sources described above do not exist in Pulaski County. However, in order for this portion of the plan to be approvable the State must make such a certification. Therefore, EPA is proposing approval of this portion of the plan provided that the agency certifies, within 30 days after publication of this notice, that those specific categories of soucrces of VOC to which CTG's apply do not exist in Pulaski County.

The Arkansas Regulations include exemptions for methyl chloroform and methylene chloride. These organic compounds, while not appreciably affecting ambient ozone levels, are potentially harmful. Both methyl chloroform and methylene chloride have been identified as mutagenic in bacterial and mammalian cell test systems a circumstance which raises the possibility of human mutagenicity or carcinagenicity. The EPA is concerned that the State has chosen this course of action without full consideration of the total environemental and health implication. However, the SIP will not be disapproved if, after due consideration, the State chooses to maintain these exemptions. This policy should not be interpreted as encouraging the increased use of these compounds. Furthermore, State officials and sources should be advised that there is a strong possibility of future regulatory action to control these compounds. Sources which choose to comply by substitution may be required to install control systems as a consequence of the regulatory action.

The Arkansas VOC regulations specify an overall compliance schedule for all existing sources subject to the VOC emission control requirements. The general compliance schedule requires that the affected sources submit a compliance schedule by October 1, 1979. The schedule of compliance must be approved by the Arkansas Commission of Pollution Control and Ecology by February 1, 1980, and must require that the necessary controls be installed and placed into operation prior to June 1, 1981.

The compliance schedule does not establish a final compliance date. It could be interpreted that since some of the emission control requirements are specified in terms of equipment requirements (e.g., submerged fill pipe, bottom filling, floating roof) that installation and operation are equivalent to final compliance in all cases. However, because one of the regulations is a mass emission limitation, the compliance schedules must specify a final compliance date to be approvable. The Agency is encouraged to establish the final compliance date as June 1, 1981, to demonstrate attainment as expeditiously as practicable.

EPA is proposing approval of this portion of the plan provided that a final compliance date is established in Section 4.5(a) of the Arkansas regulations and submitted to EPA within 120 days after publication of this notice and further provided that the final compliance date is adequate to demonstrate attainment as expeditiously as practicable.

Section 4.6 specifies requirements for demonstrating compliance with the VOC emission limitations. This Section, to be approvable, must specify a sampling method for determining VOC emission rates.

In EPA's review of the regulations and specific to Sections 4.2(b), 4.4(a), 4.4(b) and 4.5.(a)(2), EPA points out that any exemption or extension granted with respect to these sections must be submitted to EPA as revisions to the plan. Such exemptions approved by EPA will become part of the SIP. Any source operating under such an exemption or extension which has not been approved by EPA shall be subject to enforcement action under Section 113 of the Act.

Transportation Control Measures

The stretegy outlined in the SIP for control of ozone in Pulaski County satisfactorily demonstrates that the NAAQS can be attained not later than December 31, 1982 in accordance with provisions of Section 172(a)(1) of the Act. Emission reductions necessary to attain the ozone standard of 0.12 ppm will be achieved primarily through the FMVCP. VOC emissions from highway vehicles in Pulaski County are projected to decrease by more than 38 percent (6,464 tons) by 1982 as a result of the FMVCP. Reductions expected from the FMVCP were estimated using the Mobile 1 model and are comparable with projections made for other urban areas. The projected emissions from highway vehicles in 1982 includes a projected increase in vehicle miles traveled (VMT) of 17 percent. VMT projections were obtained from the Arkansas State Highway and Transportation Department. Emissions projections for 1982 in Pulaski County are documented in EPA report "Summary Report on Motor Vehicle Emissions Inspection and Maintenance Program for Pulaski County, Arkansas, February, 1979".

Since an extension of the attainment deadline beyond December 1982 is not required it is not mandatory for the ozone control strategy to include provisions for the development of a vehicle emissions inspection and maintenance program or a transportation control plan (TCP). However, the State has acknowledged the potential for additional reductions due to transportation controls and has included a commitment in the SIP to perform a feasibility study of available transportation control measures.

Authority to Implement SIP

The State has evidenced, through the establishment, adoption and submittal of regulations and compliance schedules, their commitment to implement and enforce the plan. In addition, the State has acknowledged

the potential for additional reductions due to transportation controls, and has included a commitment in SIP to perform a feasibility study of available transportation control measures.

The development of the transportation control strategies for Pulaski County is the responsibility of Metroplan. Metroplan is the Metropolitan Planning Organization for transportation planning in the urbanized area of Pulaski County and was designated by the Governor of Arkansas in a letter of October 31, 1978, as the lead planning agency in accordance with provisions of Section 174 of the Act. The designation of Metroplan satisfies the requirement of Sections 121 and 174 which emphasizes that organizations of elected officials representing Local governments must play a major role in the development of transportation control strategies.

As evidence of intergovernmental coordination a Memorandum of Agreement has been signed between Metroplan, the Arkansas Department of Pollution Control and Ecology and the Arkansas Highway Department. The agreement outlines the division of responsibilities between the participating agencies in the development of the Transportation Control Plans for Pulaski County.

The Arkansas Plan also includes a proposed plan submitted by Metroplan, for development of a Transportation Control Plan (TCP). The plan prepared by Metroplan describes in detail the work program for TCP development. The plan also provides a program work schedule, an estimated budget and further details the responsibilities and duties of all agencies involved in carrying out the integrated transportation/air quality planning program. The work plan provided by Metroplan represents a well organized comprehensive program for the development and implementation of transportation control strategies in Pulaski County.

Effects of Plan

The nonattainment plan requirements also specify that the State must identify and analyze the effects that the plan's provisions will have on air quality, health, welfare and economics, as well as the social impacts. The plan is also to provide a summary of public comments regarding these issues.

The Arkansas plan discusses each of these issues and in EPA's opinion satisfies the requirements of the Act.

The plan also includes a section entitled "Public Participation". This section discusses meetings held with the public and elected officials and comments received at public meetings regarding the plan's requirements. The material contained in this section appears to meet the requirement that the agency summarize the public's comments.

Permit Requirements—Sections 172(b)(6) and 173

As previously stated, the SIP claims there will be essentially no growth for stationary sources of VOC. This will most probably continue to be the case as evidenced in the plan, however, the State has included permit provisions which address the requirments of Section 173 of the Act. These requirements specify that a new VOC source will not be issued a permit for construction or modification unless (1) the emissions from the proposed source, in combination with all other existing and proposed emissions are within the emissions growth allowance defined by the RFP curve, (2) LAER is used, and (3) the owner or operator of the new source has demonstrated that all major stationary sources in the State owned or operated by such person are in compliance or on a schedule of compliance. The State has, in its permit requirements set forth the same stipulations as described in Section 173 of the Act and with the exception of LAER are consistent in their requirements. The inconsistency with respect to LAER is due to the State's definition. The definition of LAER in Section 171(3) of the Act requires the most stringent emission limit defined by any SIP or the most stringent emission limit achieved in practice, whichever is more stringent. The State definition for LAER allows an interpretation of LAER which could be different than that required under the Act. EPA is proposing approval of the Arkansas permit regulation provided that the State modify and submit to EPA a definition for LAER consistent with the definition contained in Section 171(3) of the Act within 120 days after publication of this notice.

Resources—Section 172(b)(7)

In order to assure that the requirements and stipulations of the plan have a reasonable assurance of being carried out, the Act requires the identificaiton and commitment of the necessary resources.

The Arkansas plan states that the agency is presently authorized to increase its staff to a level that should be adequate to operate the additional permit requirements of the plan. The plan also states that requests for additional funds will be made for fiscal years 1980 and 1981.

The Arkansas agency has, in EPA's opinion, not been funded at a sufficient level to adequately carry out the requirements of the plan. While the statements made in the nonattainment plan, specific to resources, are encouraging they do not specifically indicate that the necessary manpower or resources will be available.

This notice is issued under the authority of Sections 110 and 171 to 178 of the Clean Air Act, as amended (42 U.S.C. 7410, 7501 to 7508).

Dated: June 8, 1979.

Myron O. Knudson,

Acting Regional Administrator.

[FR Doc. 79-22985 Filed 7-30-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 52]

[FRL 1286-4]

Implementation Plan Revisions for Nonattainment Areas in the State of California; Receipt/Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt and Availability.

SUMMARY: The purpose of this notice is to announce receipt of revisions to the California State Implementation Plan (SIP) and to invite public comment. A Nonattainment Area Plan for San Diego has been received from the California Air Resources Board. These revisions were submitted to EPA in accordance with the requirements of Part D of the Clean Air Act, as amended in 1977, "Plan Requirements for Nonattainment Areas," and are available for public inspection at the addresses below. A notice of proposed rulemaking discussing these revisions will be published in the Federal Register at a later date. The period for submittal of public comments will end not less than 60 days from this date and not less than 30 days from the published date of EPA's notice of proposed rulemaking.

ADDRESSES: Copies of the SIP revisions are available for inspection during normal business hours at the following locations:

Library, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Public Information Reference Unit, Environmental Protection Agency, 401 "M" Street, S.W., Room 2922, Washington, D.C. 20460.

California Air Resources Board, 1102 "Q" Street, Sacramento, CA 95814.

San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

INQUIRIES AND COMMENTS SHOULD BE ADDRESSED TO: Douglas Grano, Chief, Regulatory Section, Air Technical Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105. (415) 556-2938.

SUPPLEMENTARY INFORMATION: New provisions of the Clean Air Act, enacted in August, 1977, Public Law No. 95-95, require states to revise their SIP's for all areas that do not attain the National Ambient Air Quality Standards (NAAQS). The amendments required each state to submit to the Administrator a list of the NAAQS attainment status for all areas within the state. The Administrator promulgated these lists, with certain modifications, on March 3, 1978 (43 FR 8962), March 19, 1979 (44 FR 16388) and April 10, 1979 (44 FR 21261). State and local governments were required by January 1, 1979 to develop, adopt, and submit to EPA revisions to their SIP's which provide for attainment of the NAAQS as expeditiously as practicable. The San Diego County Air Pollution Control District has been designated nonattainment for carbon monoxide, photochemical oxidants (ozone), nitrogen dioxide, and total suspended particulates.

The Governor's designee submitted to EPA the nonattainment area plan for San Diego on July 5, 1979.

EPA is reviewing these revisions for conformance with the requirements of Part D of the Clean Air Act, as amended. Following review of the revisions, a notice of proposed rulemaking will be published in the Federal Register that will provide a description of the proposed SIP revisions, summarize the Part D requirements, identify the major issues in the proposed revisions, and suggest corrections. An additional 30 days will be provided for public comments at that time.

The intent of this notice is to notify the public that these revisions have been formally submitted to EPA for approval, that they are available for public inspection, and that interested persons are encouraged to submit written comments.

(Sections 110, 129, 171 to 178, and 301(a) of the Clean Air Act, as amended (42 U.S.C. §§ 7410, 7429, 7501 to 7508, and 7601(a)).)

Dated: July 17, 1979.

Carl C. Kohmert Jr.,

Regional Administrator.

[FR Doc. 79-23608 Filed 7-30-79; 8:45 am]

BILLING CODE 6560-01

[40 CFR Part 52]

[FRL 1261-4]

Approval and Promulgation of Implementation Plans; Louisiana Plan for Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes approval/disapproval actions for revisions to the Louisiana State Implementation Plan (SIP). The revisions were submitted by the Governor to fulfill the requirements of the Clean Air Act, as amended in August 1977 (the Act). The purpose of the revisions is to provide for attainment of the National Ambient Air Quality Standard for ozone in designated nonattainment areas. This is to be accomplished through the reduction of emissions of volatile organic compounds. The revisions being acted on today are those relating to SIP requirements for nonattainment areas, as specified in Part D of the Act. While portions of the SIP meet Part D requirements, corrective action for several deficiencies must be taken by the State before full approval of the SIP can be granted by the Administrator of EPA.

DATES: Interested persons are invited to submit comments on this proposed action on or before October 1, 1979.

Addresses: Written comments should be submitted to the address below. Environmental Protection Agency, Region 6, Air and Hazardous Materials Division, Air Program Branch, Attention: Jerry Stubberfield, 1201 Elm Street, Dallas, Texas 75270.

Copies of the State's submittal are available for inspection during normal business hours at the address above and at the following locations:

Environmental Protection Agency, Public Information Reference Unit, Room 2922, EPA Library, 401 M Street, SW., Washington, DC 20460.

Louisiana Air Control Commission, 325 Loyola Avenue, New Orleans, Louisiana 70160.

East Baton Rouge Health Unit, 353 North 12th Street, Room 83, Baton Rouge, Louisiana 70802.

Office of Health Services Building, 1505 North 19th Street, Monroe, Louisiana 71201.

State Office Building, 1525 Fairfield, 5th Floor, Shreveport, Louisiana 71101.

FOR FURTHER INFORMATION CONTACT: Jerry Stubberfield, Chief, Implementation Plan Section, Air Program Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2742.

SUPPLEMENTAL INFORMATION: Provisions of the 1977 Act require States to revise their SIPs for all areas that have been designated as not attaining the National Ambient Air Quality Standards (NAAQS). The Act requires that States submit necessary SIP revisions to the EPA by January 1, 1979. The requirements for an approvable SIP are described in a general preamble published in the April 4, 1979, Federal Register (44 FR 20372), and will not be restated in this notice. A supplement to the April 4 notice was published on July 2, 1979 (44 FR 38583) involving, among other things, conditional approval.

EPA proposes to conditionally approve the plan where there are minor deficiencies and the State provides assurances that it will submit corrections by a specified deadline. This notice solicits comment on what items should be conditionally approved, and it solicits comment on the deadlines where specified in this notice. A conditional approval will mean that the restrictions on new major source construction will not apply unless the State fails to submit the necessary SIP revisions by the scheduled dates, or unless the revisions are not approved by EPA.

The Governor of Louisiana submitted revisions to the State's SIP on April 30, 1979. These revisions address Part D (Plan Requirements for Nonattainment Areas) of the Act with regard to attainment of the NAAQS for ozone in the designated nonattainment areas. The Governor's submittal also includes provisions relating to other requirements of the Act. However, the action being taken today is with respect to Part D requirements only. Those SIP provisions relating to non-Part D requirements will be addressed in a later Federal Register. An evaluation report,[1] which reviews the SIP revisions in detail, is available for inspection during normal business hours at the EPA Regional Office in Dallas and at the EPA Public Information Reference Unit in Washington (see addresses above).

The Louisiana SIP was developed by the Louisiana Air Control Commission (LACC). The Louisiana Department of Transportation and Development (LDOTD) and the metropolitan planning organizations for Shreveport, Baton Rouge and New Orleans have responsibilities concerning transportation control measures. However, the SIP indicates that these measures are not needed for attainment

[1] EPA Review of Louisiana State Implementation Plan Revision, June 1978.

purposes, and, therefore, will be used only for growth allowance.

Part D—Requirements

Air Quality Problem.

Eighteen parishes in Louisiana were orignally designated nonattainment for ozone on March 3, 1978 (43 FR 8998), in accordance with Section 107 of the Act. On September 11, 1978 (43 FR 40425), Bossier Parish was added, bringing the total ozone nonattainment parishes to 19. Seven of these parishes are classified as urban, and they constitute the geographical boundaries of the three urbanized areas of Shreveport, Baton Rouge and New Orleans. The remaining parishes are classified as rural. In urban areas, the SIP must contain a control strategy, using an EPA approved reduction model, which demonstrates attainment of the ozone standard, and applies reasonably available control technology (RACT) to major stationary sources of volatile organic compounds (VOC), if the strategy demonstrates attainment by the end of 1982. In rural areas, the demonstration of attainment is not required, but RACT must be applied to major stationary sources of VOC. An adequate demonstration of attainment of NAAQS in the urban parishes and an assurance of reasonable further progress are considered sufficient for attainment and reasonable further progress in rural parishes. The rationale for this approach is discussed in the *Criteria for Proposing Approval of Revision to Plans of Nonattainment Areas* published in the Federal Register on May 19, 1978 (43 FR 21675).

The parishes, size, and population for each urbanized area are shown in the table below. The ozone design values for Shreveport, Baton Rouge, and New Orleans are 0.14 parts per million (ppm), 0.19 ppm, and 0.17 ppm respectively. The State elected to use a modified rollback model to determine the amount of VOC reduction required to show attainment of the NAAQS. Present transport (T_o) and future transport (T_f) values of 0.10 ppm and 0.06 ppm were used with an additivity factor of 0.5 to calculate the reductions. These reductions were determined to be 36 percent, 25 percent, and zero for Baton Rouge, New Orleans, and Shreveport respectively. Use by the State of the modified rollback model, present and future transport values, and the additivity value are consistent with EPA guidance.

Urbanized area	Size (Sq. miles)	Population[1]
Shreveport	1,750	300,000
Caddo Parish		
Bossier Parish		
Baton Rouge	622	359,000
East Baton Rouge Parish		
West Baton Rouge Parish		
New Orleans	1,087	1,030,000
Orleans Parish		
Jefferson Parish		
St. Bernard Parish		

[1] 1970 census.

Emission Inventories

Base year (1977) emission inventory summaries, by VOC source category, are provided in the SIP for all 19 nonattainment parishes. Projected emission summaries are provided for each urban nonattainment parish, along with current and projected emissions for specific point sources. The emission inventory data provided in the SIP are considered adequate to meet the requirements of the Act. Louisiana Regulation 17.12 requires that updated emission inventory questionnaires be submitted on a semiannual basis whenever annual emission rates of individual source points change by more than 10 percent. This reporting requirement is considered to be sufficiently frequent to allow the LACC to determine if reasonable further progress is being made and to address the need for additional emission reductions that may be required to assure attainment of the NAAQS by the specified date. Emission data, including any increases or decreases that occur, must be reported to EPA annually.

In the point source emission summaries for Shreveport and New Orleans, VOC from new or modified sources completing construction between 1977 and 1982 are included. These new emissions amount to 3,650 tons per year in Shreveport and 1,117 tons per year in New Orleans. These emissions were taken into account by the LACC in the control strategy development. No new emissions are shown for Baton Rouge. The LACC indicates in the SIP that the amount of emissions between the level actually achieved and that required to demonstrate attainment will be used as a growth allowance.

The SIP includes an exemption for methyl chloroform and methylene chloride. These organic compounds, while not appreciably affecting ambient ozone levels, are potentially harmful. Both methyl chloroform and methylene chloride have been identified as mutagenic in bacterial and mammalian cell test systems; a circumstance which raises the possibility of human mutagenicity or carcinogenicity. The EPA is concerned that the State has chosen this course of action without full consideration of the total environmental and health implications. However, the SIP will not be disapproved if, after due consideration, the State chooses to maintain these exemptions. This policy should not be interpreted as encouraging the increased use of these compounds. Furthermore, State officials and sources should be advised that there is a strong possibility of future regulatory action to control these compounds. Sources which choose to comply by substitution may be required to install control systems as a consequence of later regulatory action.

Control Strategy for Shreveport

For the Shreveport urbanized area, 1977 VOC emissions are shown in the SIP to be just over 30,000 tons per year. Of this total, motor vehicle emissions represent 62 percent while point source emissions represent only 8 percent. These contributions indicate a strong dependence of the control strategy on motor vehicle emission reductions for the Shreveport area.

Using the modified rollback model (see earlier discussion), no emission reductions are required to demonstrate attainment in the Shreveport urbanized area. However, based on the State's regulations and application of the Federal Motor Vehicle Control Program (FMVCP), emissions are reduced by an estimated 19 percent by 1982, which allows a margin for growth.

For SIPs that demonstrate attainment of the ozone NAAQS by 1982 by means other than photochemical dispersion modeling, RACT must apply to all major sources covered by each Control Techniques Guideline (CTG), and in urbanized areas to enough additional sources to provide for reasonable further progress and attainment as expeditiously as practicable. The Louisiana regulations apply to all major CTG sources in the Shreveport area except refinery vacuum producing systems and process unit turnarounds. Since modified rollback was used instead of the more exacting photochemical dispersion modeling, EPA policy requires enforceable regulations for all major CTG sources. Therefore, EPA is proposing to conditionally approve the control strategy for Shreveport based on submittal by the State of RACT regulations for refinery vacuum producing systems and process unit turnarounds. The time required for submittal is provided below in the discussion for Baton Rouge.

Control Strategy for Baton Rouge

The 1977 VOC emissions for the Baton Rouge urbanized area are shown in the SIP to be 79,477.4 tons per year. Emissions from motor vehicles represent 26 percent of the 1977 total VOC, and those from point sources represent 59 percent. These contributions are indications of the industrialization of the Baton Rouge area.

Based on an ozone design value of 0.19 ppm, and using the modified rollback model, an emission reduction of 36 percent (28,611.9 tons VOC) is required to demonstrate attainment. In the State's summary of expected reductions, 28,623.6 tons of VOC are shown as being reduced by 1982. Based on the State's calculated value, 11.7 tons of VOC will be available for growth allowance. In the State's control strategy summary, emissions for the "other solvent use" category were included. The State's emission inventory shows this amount to be 1,299.4 tons per year. This amount was included in the 1977 inventory, and in the projected inventory for 1982. The State failed to account for any growth for the "other solvent use" category. If it is conservatively assumed that the population for the Baton Rouge area increases by only 1,000 per year for the period between 1977 and 1982, an additional 20 tons of VOC would be included in the 1982 area source inventory. As a result, the overall emission reduction would be 28,603.6 tons, which is below the amount calculated by the State as being needed to demonstrate attainment.

As pointed out in the discussion for Shreveport, the Louisiana regulations do not include controls for refinery vacuum producing systems and process unit turnarounds. In addition, the State's regulation for refinery wastewater treatment exempts water separation facilities which receive effluent water containing less than 200 gallons of VOC per day. EPA guidelines do not include such an exemption. The CTGs provide information on available air pollution control techniques, and contain recommendations of what EPA calls the "presumption norm" for RACT. Based on the information in the CTGs, EPA believes the submitted regulations represent RACT, except as noted. On points noted, the State regulations are not supported by the information in the CTGs, and the State must provide an adequate demonstration that its regulations represent RACT.

The Louisiana control strategy consists of current and projected emission inventory summaries, and new and revised regulations are included in the SIP. However, it is not possible to verify expected emission reductions since detailed calculations are not a part of the SIP, nor were they provided to EPA previously. This verification is especially important in those cases where the adequacy of the demonstration of attainment is questionable.

Because of the shortfall of the 1982 attainment demonstration, EPA has serious doubts concerning the adequacy of the Baton Rouge control strategy. However, EPA is proposing to conditionally approve the control strategy for the Baton Rouge urbanized area based on the State taking the actions listed below.

1. Adoption and submittal of regulations representing RACT for refinery vacuum producing systems and process unit turnarounds within 120 days of this notice.

2. Submittal of a demonstration that wastewater separators exempted in Section 22.6 are minor sources (or other justification) within 30 days of this notice. Otherwise, revise Section 22.6 to eliminate the exemption and submit the revision within 120 days of this notice.

3. Submittal of the detailed calculations used to estimate emission reductions from the stationary VOC source categories in the Baton Rouge urbanized area within 30 days of this notice.

Control Strategy for New Orleans

The 1977 VOC emission inventory for the New Orleans urbanized area is 87,135.1 tons. Emissions from motor vehicles and point sources are more balanced than in Shreveport and Baton Rouge. Contributions from these two source categories are 34 percent and 43 percent respectively.

Based on an ozone design value of 0.17 ppm, and using the modified rollback model, a reduction of 25 percent (21,783.8 tons) is required to demonstrate attainment. The emission reduction which the State expects to achieve by 1982 is shown as 28,680.4 tons. This reduction would provide approximately 7,000 tons of VOC for growth allowance.

There are no RACT regulations which apply to refinery vacuum producing systems or process unit turnarounds. In addition, calculations for verifying the estimated emission reductions are needed. Therefore, EPA is proposing to conditionally approve the control strategy for the New Orleans urbanized area based on the State submitting RACT for the omitted CTG sources and detailed calculations used to estimate VOC emission reductions from stationary source categories. The times for completing these actions are provided in the discussion for Baton Rouge.

Other Part D Requirements

1. *Public Involvement—Sections 172 (b)(1) and (b)(9):*[1] The Governor's submittal letter states that the SIP was adopted after adequate notice and public hearing. However, certification by the State that the hearing was held and evidence of the public notice were not included in the SIP. EPA is proposing approval of the SIP based on the State submitting hearing information within 30 days of this notice.

The Governor designated the LACC as the lead agency responsible for SIP actions. The LDOTD was designated as the lead agency responsible for coordination of development of transportation control strategies. The Governor indicated that designation of specific metropolitan planning organizations would be coordinated by the LDOTD, and that participation by these organizations in developing and implementing transportation controls would be accomplished to the extent that they have the capability and desire to participate. Written agreements between the LACC, LDOTD, and planning organizations for Shreveport, Baton Rouge, and New Orleans are included in the SIP. These signed agreements outline the responsibilities of each organization with respect to SIP activities.

An analysis of the economic, energy, health, and social impacts of the attainment provisions is included in the SIP. However, a summary of public comments on this analysis is not included. EPA expects to receive this additional information prior to final action on the SIP.

2. *Resources—Section 172(b)(7):* The designation of the LACC by the Governor as the lead agency responsible for the SIP and any revisions thereof is considered by EPA to be a State commitment to carry out the provisions of the SIP. While it has been the EPA's position for several years that the manpower and financial resources made available to the LACC for air pollution control activities have been extremely low, considering the large number of major stationary sources in Louisiana, recent legislative activities in Louisiana indicate that an improvement in the State's air program resources is likely. House bill 433 passed the Louisiana House on May 31, 1979. This bill provides for a reorganization of the air

[1] Sections of the Clean Air Act.

control program, and relocates the program under the Department of Natural Resources. While the State agency expects the financial and manpower resources to at least double, the increase may still not be enough to adequately carry out the entire program.

3. *Permit Requirements—Sections 172(b)(6) and 173:* The SIP contains a discussion on the State's intended approach for handling VOC emissions from new sources. The following are cited in the SIP as alternatives:

a. Require the lowest achievable emission rate (LAER), through new source permits, for source processes.

b. Implement the offset policy on a case-by-case basis to maintain emissions within the 1982 attainment level.

c. Allocate a portion of the growth allowance on a case-by-case basis for the particular nonattainment area.

The State has authority to require LAER as evidenced in the past by the application of the Interpretative Ruling through Commission Orders. As a result of past actions with regard to new source review, the authority possessed by the LACC, and the statement of intent for managing new sources, the SIP is considered adequate for meeting the requirements of Section 173 regarding reasonable further progress.

Louisiana Regulation 6.0 specifies the requirements for new source review. While the LACC has authority to require LAER through Commission Orders, this regulation contains no specific requirement that new or modified sources comply with LAER. Therefore, the State's permit program is deficient with respect to Section 173(2). There are no provisions in Regulation 6.0 which require owners or operators of new or modified sources to demonstrate that existing sources in Louisiana owned or operated by them are in compliance with applicable regulations of the SIP, or are on a compliance schedule. Therefore, the State's permit program is deficient with respect to Section 173(3).

The EPA is proposing to conditionally approve the Louisiana SIP with respect to new source review based on the State completing the actions below.

d. Revise Regulation 6.0 to include a requirement that new or modified source comply with LAER.

e. Revise Regulation 6.0 to require owners or operators of proposed new or modified sources to demonstrate that all major stationary sources in the State owned or operated by them are in compliance with applicable portions of the SIP, or are on a schedule of compliance.

These actions are to be completed and submitted to EPA no later than November 28, 1979.

4. *Implementation and Enforcement—Section 172(b)(10):* New and revised VOC regulations were adopted by the LACC and submitted with the SIP. Compliance schedules are to be submitted at a later date. The SIP also includes written agreements between the LACC, the LDOTD, and the metropolitan planning organizations for Shreveport, Baton Rouge, and New Orleans. The legally enforceable regulations and signed agreements are considered by EPA as sufficient written evidence to satisfy the requirements of Section 172(b)(10) of the Act.

Hydrocarbon Control Regulations

A new Section 17.16 is being added to the State's regulations, which addresses the "bubble concept" of controlling emissions. The language of Section 17.16 is general in nature, and as written, is vague with respect to requirements that must be met by sources wishing to employ the bubble concept. EPA is proposing to approve Section 17.16. However, the State will be required to submit proposed control plans to EPA for a determination of consistency with EPA guidance.

Section 22.12.4 exempts degreasing sources which emit a combined weight of VOC less than 100 pounds in any consecutive 24-hour period from control requirements. Such an exemption is inconsistent with EPA guidance for solvent metal cleaning. However, EPA is proposing to approve Section 22.12.4 based on submittal of information by the State which satisfactorily demonstrates that the exempted sources affect less than 5 percent of the emissions from the solvent metal cleaning (degreasing) category. This information is to be submitted within 30 days of publication of this notice.

Louisiana's regulations for solvent metal cleaning employ control system A. This is acceptable if the State does not seek an extension of the attainment date, and if there are no sources in the nonattainment areas which emit 100 tons per year or more of VOC. The first condition is satisfied since Louisiana is not seeking an attainment date extension. With respect to the second condition, the baseline emission inventory does not show any solvent metal cleaning sources which emit 100 tons or more of VOC. However, the State will be required to certify that there are no such sources located in the nonattainment areas. This certification is to be submitted by the State on or before August 30, 1979.

On December 9, 1977, the Governor submitted revisions to the Louisiana SIP. Part of the revision package included a new Regulation 22.0 which combined the requirements of existing Regulations 22.0, Control of Volatile Organic Compounds from New Sources, and A22.0, Control of Volatile Organic Compounds from Existing Sources. On March 2, 1979 (44 Fed. Reg. 11798) EPA proposed, *inter alia*, approval of Sections 22.3 and 22.10, and disapproval of Sections 22.8 (b) and (c). Prior to final action on Regulation 22.0 EPA, the Governor withdrew Sections 22.3, 22.8 and 22.10. Section 22.3 specifies control requirements for VOC storage tanks, which is a CTG source category. Section 22.8 concerns the control of waste gas streams and Section 22.10 concerns exemptions for certain VOC.

The Governor's submittal of April 30, 1979, includes revisions to those sections of Regulation 22.0 which had been previously withdrawn. This means that revisions were submitted for regulations that are no longer officially before EPA. Therefore, EPA cannot act on the material dealing with Sections 22.3, 22.8 and 22.10 as it was submitted on April 30, 1979.

On May 22, 1979 after notice and hearing, the LACC adopted new versions of Sections 22.3, 22.8 and 22.10. EPA has been advised that the new sections address the problems identified by EPA in the previously proposed disapproval of March 2, 1979. The new sections will be submitted by the Governor to EPA. Therefore, EPA is proposing approval of the Louisiana SIP based on adequate provisions for these sections being submitted in their entirety. Submittal is to be made no later than August 30, 1979.

Any exemptions granted under Sections 22.9.1 or 22.9.3(e) of Regulation 22.0 will be considered revisions to the SIP. Consequently, such exemptions must be submitted to and approved by EPA before they will become part of the approved SIP. Any source operating under an exemption which has not been approved by EPA will be subject to enforcement action under Section 113 of the Act.

The State has not committed to adopt additional VOC control measures consistent with CTGs published by EPA after January 1, 1978, but rather has only committed to "review and consider" such measures for incorporation into the SIP. However, EPA is proposing to conditionally approve the SIP based on the State taking the actions listed below.

1. Submittal of adopted RACT regulations by January 1980 for the following source categories:

a. Vegetable oil processing.
b. Petroleum refinery leaks.
c. Gasoline tank trucks.
d. Perchloroethylene dry cleaning.
e. Pharmaceutical manufacture.
f. Miscellaneous metal parts and products.
g. Graphic arts.
h. Pneumatic rubber tire manufacture.
i. Flatwood paneling.
j. Floating roof tanks.

2. Submittal of adopted RACT regulations by January 1981 which control VOC emissions from additional source categories for which EPA issues a new CTG by January 1980.

3. Demonstration by certification that there are no sources in the State for a given VOC source category that is not regulated.

This notice is issued under the authority of Sections 110 and 171 to 178 of the Clean Air Act, as amended, 42 U.S.C. §§ 7410 and 7501 to 7508.

Dated: June 12, 1979.

Myron O. Knudson,

Acting Regional Administrator.

[FR Doc. 79-22986 Filed 7-30-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 52]

[FRL 1281-3]

Approval and Promulgation of Implementation Plans; Oklahoma Plan for Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes approval/disapproval of various revisions to the Oklahoma State Implementation Plan (SIP). The revisions were submitted by the Governor to fulfill the requirements of the Clean Air Act, as amended in August 1977 (the Act), for attainment and maintenance of National Ambient Air Quality Standards. The revisions being acted on today are those relating to the plan requirements for nonattainment areas (Part D of the Act) and include control requirements for hydrocarbons, carbon monoxide, and particulate matter. In reviewing the State submittal EPA assessed the ability of the plan to meet the requirements of Part D.

While the plan basically meets the Part D requirements there are several deficiencies in the plan that the State needs to address before full SIP approval can be granted by the Administrator.

DATE: Interested persons are invited to submit comments on this proposed action on or before October 1, 1979.

ADDRESSES: Written comments should be submitted to the address below: Environmental Protection Agency, Region 6, Air and Hazardous Materials Division, Air Program Branch, 1201 Elm Street, Dallas, Texas 75270.

Copies of the State's submittal are available for inspection during normal business hours at the address above and at the following locations:

Environmental Protection Agency, Public Information Reference Unit, Room 2922, EPA Library, 401 M Street, S.W., Washington, D.C. 20460.

Oklahoma State Department of Health, Air Quality Service, Northeast 10th Street and Stonewall, Oklahoma City, Oklahoma 73105.

FOR FURTHER INFORMATION CONTACT: Jerry Stubberfield, Chief, Implementation Plan Section, Environmental Protection Agency, Region 6, Air and Hazardous Materials Division, Air Program Branch, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2742.

SUPPLEMENTARY INFORMATION: Provisions of the 1977 Clean Air Act Amendments (the Act) require States to revise their SIP's for all areas that have been designated as not attaining the National Ambient Air Quality Standards (NAAQS). The Act requires that States submit the necessary plan revisions to the EPA by January 1, 1979. The requirements for an approvable SIP are described in a general preamble published in the April 4, 1979, Federal Register (44 FR 20372), and will not be restated in this notice. A supplement to the April 4 notice was published on July 2, 1979 (44 FR 38583) involving among other things conditional approval.

EPA proposes to conditionally approve the plan where there are minor deficiencies and the State provides assurances that it will submit corrections by a specified deadline. This notice solicits comments on what items should be conditionally approved, and it solicits comments on the deadlines where specified in this notice. A conditional approval will mean that the restrictions on new major source construction will not apply unless the State fails to submit the necessary SIP revisions by the scheduled dates, or unless the revisions are not approved by EPA.

The Governor of Oklahoma, after adequate notice and public hearing, submitted revisions to Oklahoma's SIP on April 2, 1979. The revisions include provisions for attainment and maintenance of the NAAQS for ozone, carbon monoxide, and particulate matter, in the designated nonattainment areas. These provisions address Part D (Plan Requirements for Nonattainment Areas) of the Act. In addition, the State submittal included provisions relating to other parts of the Act. The action being taken today by EPA is only with respect to Part D requirements. An evaluation report,[1] which reviews the SIP in detail, is available for inspection by interested parties during normal business hours at the EPA Region 6 office and at the other above stated addresses. The overall plan was developed by the Air Quality Service (AQS).

PART D—SIP REQUIREMENTS

Ozone.

A. *Air Quality Problem.* In the March 3, 1978 Federal Register, at 43 FR 9037 the EPA identified three counties in the State of Oklahoma which were not attaining the NAAQS for photochemical oxidants, Tulsa, Oklahoma and Cleveland Counties. Subsequent to these designations, EPA promulgated revisions to that standard (at 44 FR 8218, February 8, 1979) as follows: (1) the designated pollutant was changed from photochemical oxidants to ozone, (2) the level of the standard was changed from 0.08 parts per million (ppm) to 0.12 ppm, and (3) the method of determining a violation of the standard was changed. The State reevaluated the air quality data for these nonattainment areas in light of the revised standard and determined that concentrations in Cleveland County no longer exceeded the new standard. Therefore, the ozone plan does not address Cleveland County. However, the State must submit a formal request for redesignation, before the State can be relieved of the requirement to submit a SIP for this area.

For Tulsa and Oklahoma Counties, which are identified as urban areas, according to EPA guidelines, design values were developed in accordance with methods described in the January 1979 EPA document, "Guideline for Interpretation of Ozone Air Quality Standards," considering ozone data collected during the calendar years 1975, 1976, and 1977. The State used the linear rollback technique to determine the percent emission reduction needed to demonstrate attainment of the ozone standard. Although the promulgation of the new standard required the consideration of background and transported ozone in the development of the control strategy, EPA guidance specifies that linear rollback may be used if the net impact on control

[1] EPA Review of Oklahoma State Implementation Plan Revision, June 1979.

requirements is relatively insignificant. Since the linear rollback technique results in at least as stringent reduction requirements, as the method which accounts for present and future levels of transported ozone, the use of this method is considered to be acceptable.

The following table indicates the design values, and the required percentages of reduction resulting from the linear rollback method.

Table 1.—*Emission reduction requirements*

Nonattainment county	Design value (ppm)	Percent reduction required
Oklahoma	0.13	8
Tulsa	0.17	29

B. *Emission Inventories.* Base year (1977) emission inventory summaries, by volatile organic compound (VOC) source category, are provided in the SIP for both nonattainment counties. The emission inventory summaries for area sources of VOC were developed by an EPA contractor [2] and modified by the State to reflect recent updates. The projected 1982 inventories include the effect of projected growth of new and existing sources. According to the State, growth rates used are considered to be consistent with those of other area planning agencies.

C. *Control Strategy.* The control strategy submitted by the State of Oklahoma is based on emission reductions achieved through the application of reasonably available control technology (RACT) to existing major stationary sources consistent with Control Technique Guidelines (CTGs) published prior to January 1, 1978, and the Federal Motor Vehicle Control Program (FMVCP).

The State has not committed to adopt additional VOC control measures consistent with CTGs published after January 1, 1978. However, the EPA proposes to approve the SIP on the following conditions:

1. The State submits adopted RACT regulations for the following source categories by January 1980:

a. Vegetable oil processing.
b. Petroleum refinery leaks.
c. Gasoline tank truck.
d. Perchloroethylene dry cleaning.
e. Pharmaceutical manufacture.
f. Miscellaneous metal parts and products.
g. Graphic arts.
h. Pneumatic rubber tire manufacture.
i. Flatwood paneling.
j. Floating roof tanks.

[2] "Inspection/Maintenance and Emission Inventories of Area Sources in Oklahoma, Vol. I and II." EPA 906/9-79-004b, February 1979.

2. The State adopts by January 1981 regulations which control emissions from additional source categories for which EPA issues an new CTG by January 1980.

3. The State demonstrates by certification that there are no sources in the State for a given VOC source category that is not regulated.

D. *Regulations and Reductions.* Oklahoma Air Pollution Control Regulation No. 15 entitled, "Control of Emissions of Organic Materials" has been revised to include legally enforceable regulations which address the application of RACT for the following source categories covered in the CTGs: petroleum liquid storage in fixed roof tanks; degreasing; bulk gasoline terminals; petroleum refinery vacuum systems, wastewater separators, and process unit turnaround; and cutback asphalt. The State has not submitted legally enforceable regulations for the remaining source categories identified in the CTGs. However, the EPA proposes to approve the SIP on the condition that the State submit legally enforceable regulations covering the remaining source categories within 150 days of the publication of this notice, or certification that there are no major sources in the nonattainment areas for these remaining source categories within 30 days of the publication of this notice.

EPA has reviewed the revisions to Regulation No. 15 and found several deficiencies in the State's approach to the control of VOCs from stationary sources. The CTGs provide information on available air pollution control techniques, and contain recommendations of what EPA calls the "presumptive norm" for RACT. Based on the information in the CTGs, EPA believes that the submitted regulations represent RACT, except as noted below. On the points noted below, the State regulations are not supported by the information in the CTGs, and the State must provide and adequate demonstration that its regulations represent RACT.

1. The definition of VOC in Subsection 15.12.C. is less restrictive than EPA's definition, which could result in no control of some compounds.

2. Subsection 15.12.D exempts methly chloroform (1, 1, 1 trichloroethane) and methlene chloride. These VOCs while not appreciably affecting ambient ozone levels, are potentially harmful. Both methyl chloroform and methylene chloride have been identified as mutagenic in bacterial and mammalian cell test systems, a circumstance which raises the possibility of human mutagenicity and/or carinogenicity.

With the exemption of these compounds, some sources, particularly existing degreasers, will be encouraged to utilize methyl chloroform in place of other more photochemically reactive degreasing solvents. Such substitution has already resulted in the use of methyl chloroform in amounts far exceeding that of other solvents. Endorsing the use of methyl chloroform by exempting it in the SIP can only further aggravate the problem by increasing the emissions produced by existing primary degreasers and other sources.

The EPA is concerned that the State has chosen this course of action without full consideration of the total environmental and health implications. The EPA does not intend to disapprove the State SIP submittal if, after due consideration, the State chooses to maintain these exemptions. However, we are concerned that this policy not be interpreted as encouraging the increased use of these compounds nor compliance by substitution. The EPA does not endorse such approaches. Furthermore, state officials and sources should be advised that there is a strong possibility of future regulatory action to control these compounds. Sources which choose to comply by substitution may well be required to install control systems as a consequence of these future regulatory actions.

3. Subsection 15.30 specifies emission limitations for various types of coatings. Based on the surface coating CTG documents, emission limitations consistent with RACT should be specified for the various types of coating lines (i.e., cans, coils, paper, etc.) not each type of coating. Regulations consistent with RACT for the various coating operations must be developed, unless the State can certify that there are no major coating sources in the nonattainment counties.

4. Subsection 15.50 should be revised to reflect that the additional controls discussed in the subsequent subsections must apply to those areas designated as nonattainment by the EPA, not the Commissioner.

5. Subsection 15.522 exempts stationary storage containers with average daily throughputs less than 30,000 gallons from the control requirements specified in this subsection. Since RACT requirements define a bulk terminal as any facility with daily throughputs greater than 20,000 gallons, the effect of this subsection is to exempt terminals consisting of containers with throughputs less than 30,000 gallons per

day. Also, not many tanks less than 40,000 gallons will have a daily throughput of more than 30,000 gallons. EPA is assuming that for any loading facility with an aggregate throughput greater than 20,000 gallons per day, Section 15.523 (which has no applicability cutoff) overrides Section 15.522. For example, a 60,000 gallon per day terminal consisting of three 25,000 gallon containers, each with a 20,000 gallon per day throughput, would be exempt from Section 15.522 but must meet the control requirements of Section 15.523. If the State interprets these two section differently, 15.522 must be changed to conform to RACT. Alternatively, if the State provides certification that no bulk terminal within the nonattainment areas will be exempted, the exemption contained in this section is acceptable.

6. Subsection 15.53 pertains to the control of VOC emissions from wastewater separators. It provides an exemption for those separators receiving less than 100 gallons of VOC/day. The State must provide an evaluation of how this exemption affects the reductions achieved for this source category.

7. Subsection 15.55 must be revised to require that vapors from hot wells and accumulators be vented to a fire-box or incinerator. The words "if necessary" should be removed or the conditions under which the vapors would not be incinerated should be defined.

8. Subsection 15.563 must be revised to reflect that conveyorized degreasers should be subject to the more stringent controls of Control System B, as defined in the CTG concerning degreasing, if such facilities are located at a single source and would collectively have the potential to emit more than 100 tons per year; unless the State provides certification that there are no such sources in the nonattainment areas or other justification.

EPA intends to propose approval of Regulation No. 15 on the following conditions: (1) the regulation is revised in accordance with the requirements discussed above within 150 days from the publication of this notice, and (2) that the State submit the required evaluations or certifications within 30 days from the publication of this notice.

According to the State, additional reductions will be achieved through the FMVCP. EPA's Mobile 1 computer program was used to calculate vehicle emissions for 1977 and 1982. Input data, used in the model, were obtained from the Oklahoma Department of Transportation.

Based on the application of the control measures discussed above, the State has predicted that the following percentages of reduction will be achieved by the end of 1982, in the nonattainment counties; 33.6 percent for Tulsa County and 15.2 percent for Oklahoma County. Comparison of these figures with the required percentages of reduction shown in Table 1 indicates that the predicted reductions will be sufficient to demonstrate attainment of the ozone standard by December 31, 1982 in Tulsa and Oklahoma Counties.

E. *Reasonable Further Progress.* In order to verify that the predicted emission reductions will be accomplished at a reasonable and efficient rate, the State developed RFP schedules, which indicate the actual rate at which reductions will be achieved in the two nonattainment counties. These schedules, which are presented in graphical format, demonstrate that predicted reductions will be achieved at a rate consistent with or below the RFP rate, thereby providing a growth allowance which is quantified graphically for both counties. Therefore, the EPA considers the submittal of these RFP schedules to satisfy the requirement of assuring RFP in the period prior to attainment, and providing sufficient reductions to ensure attainment by the specified date.

In addition, the State has committed to submit annual reports which will report on the progress in meeting the RFP schedules. These reports will contain updated emission inventories including growth of mobile sources, minor new stationary sources, major new or modified stationary sources, and reductions in VOC emissions from existing sources.

Carbon Monoxide

A. *Air Quality Problem.* In the March 3, 1978 Federal Register, a portion of Tulsa County was designated as nonattainment for carbon monoxide (CO). (An exact description of the geographic area is included in the SIP and discussed in the evaluation report.)

Violations of only the eight-hour standard have been recorded for this portion of Tulsa County during the period from 1975 to 1977, with the highest second-high value being 12.7 mg/m^3. The State used this concentration as the design value in the linear rollback equation in order to determine the percent emission reduction needed to demonstrate attainment of the CO standard. This calculation results in a required percent reduction of 21.3 percent.

B. *Emission Inventories.* An emission inventory for CO emissions was developed by the State for all of Tulsa County, using 1977 as the base year. The projected 1982 inventory includes the effect of projected growth of new and existing sources, including mobile sources. According to the State, growth rates used are considered to be consistent with those of other area planning agencies.

C. *Control Strategy.* The control strategy submitted by the State of Oklahoma is based on emission reductions achieved through the application of controls on existing major stationary sources of CO and the FMVCP.

D. *Regulations and Reductions.* Oklahoma Air Pollution Control Regulation No. 17 entitled "Control of Emission of Carbon Monoxide," has been revised to require controls for the following existing major sources: foundry cupolas, blast furnaces, basic oxygen furnaces, catalytic cracking units, and other petroleum or natural gas processes, except stationary engines. Since EPA has not issued definitive guidance concerning RACT for sources of CO emissions, the State has determined that complete secondary combustion of the generated waste gas shall constitute RACT and that removal of 93 percent or more of the CO generated is equivalent to complete secondary combustion. All sources subject to this regulation must be in compliance no later than December 31, 1982.

EPA will accept this regulation as RACT for the stationary sources to which it applies. However, EPA has identified several minor problems with the regulation as discussed below.

1. Subsection 17.2.a. defines the area of applicability of the regulation. Specifically, it applies to those sources "... located in, or significantly impacting on a nonattainment area for carbon monoxide ...". A significant impact should be defined so as to determine what sources are covered by this regulation.

2. This subsection also refers to nonattainment areas "... as designated by the Commissioner ...". It should be noted that all designations must be submitted to EPA for promulgation.

According to the State, additional reductions will be achieved through the FMVCP. Vehicle emissions for 1977 and 1982 were calculated as described in the discussion on the ozone control strategy.

On the basis of the application of the control measures discussed above, the State has predicted that a 28.1 percent reduction in CO emissions will be achieved by the end of 1982. Since a 21.3 percent reduction in emissions is required, the predicted reduction will be

more then sufficient to demonstrate attainment of the CO standard by December 31, 1982.

E. *Reasonable Further Progress.* An RFP schedule was developed for Tulsa County, in order to indicate the actual rate at which CO emission reductions will be achieved. This schedule, which is presented in graphical format, demonstrates that predicted reductions will be achieved at a rate consistent with or below the RFP rate, thereby providing a growth allowance which is quantified graphically. Therefore, the EPA considers the submittal of this RFP schedule to satisfy the requirements of assuring RFP in the period prior to attainment and providing sufficient reductions to ensure attainment by the specified date.

The State has also committed to track RFP, through annual reporting as detailed in the discussion on the ozone control strategy.

Particulate Matter

A. *Air Quality Problem.* In the March 3, 1978 Federal Register, with a subsequent revision on September 11, 1978 (43 FR 40431), portions of Tulsa, Oklahoma and Mayes Counties were designated as nonattainment for particulate matter (TSP). (An exact description of the geographic areas is included in the SIP and discussed in the evaluation report.)

The State chose the more restrictive standard, the annual geometric mean (AGM) on which to base the control strategies. Design values were developed from TSP monitor data recorded during the last quarter of 1976 and the first three quarters of 1977. The State did not remove particulate samples from the data base measured during two major dust storms which occurred during this period, prior to the calculation of the AGMs. Therefore, the design values are higher than they need be. However, since these higher design values resulted in more stringent emission reduction requirements, the EPA considers the State's demonstrations of attainment for these areas to be conservative.

Through dispersion and filter analyses, the State determined that emissions from major sources did not significantly affect the nonattainment areas. Therefore, the linear rollback method was used to determine the percentages of reduction required to demonstrate attainment of the TSP standard. Using the design values developed by the State, in the linear rollback equation, results in the following required percentages of reduction. For all areas, the State assumed a background concentration of 30 $\mu g/m^3$.

Table 2.—*Emission reduction requirements*

Nonattainment area	Design value ($\mu g/m^3$)	Percent required reduction
Portion of Tulsa Co.	*82 (78)	*13.5 (6.0)
Portion of Oklahoma Co.	93 (83)	28.6 (23.7)
Portion of Mayes Co.	84 (80)	16.7 (10.0)

*The design values and required reductions in parentheses represent EPA recommended values, resulting from removal of dust storms.

B. *Emission Inventories.* Emission inventories for TSP emissions were developed for Tulsa and Oklahoma Counties, and that portion of Mayes County designated as nonattainment, using 1977 as the base year. Included in the inventories were emissions from fugitive sources and area sources which were developed in part by an EPA contractor.[2] The projected 1982 inventories include the effects of projected growth of new and existing sources. According to the State, growth rates used are considered to be consistent with those of other planning agencies.

C. *Control Strategy.* The control strategy submitted by the State is based on emission reductions which will be achieved through the implementation of revisions to Regulation No. 9, "Control of Fugitive Dust." Basically, the regulation was revised to more clearly delineate the specific measures that the State will require in order to minimize fugitive dust emissions. Specific control techniques such as the use of water or chemicals in demolition and construction operations, the application of water or chemicals on stockpiles, the covering or wetting of open-bodied trucks, and the use of vegetative ground cover are required.

D. *Regulations.* The effectiveness of the TSP control strategy presented in the Oklahoma SIP hinges on the ability of the revisions to Regulation No. 9 to achieve the anticipated reductions. While EPA does not dispute the fact that the control techniques specified in this regulation would constitute RACT for TSP, the Agency does question the specificity and enforceability of Regulation No. 9 in achieving the reductions predicted by the State. For example, Subsection 9.3 specifies that ". . . the Commissioner shall require specific reasonable precautions . . .." but the actual degree of control or extent of activity that is "reasonable" is not specified. Since the degree of control is not specified in the regulation, it is impossible to confirm the 65 percent reduction that the control strategy claims to be achieved through Regulation No. 9 for all fugitive dust sources in all the TSP nonattainment areas. Therefore, the EPA is proposing approval of the TSP control strategy and Regulation No. 9 on the following conditions:

1. That the State submit a demonstration for each nonattainment area, using appropriate modeling techniques that indicates that a 65 percent reduction in fugitive dust emissions as specified in regulation No. 9 will result in air quality concentrations below or at the level of the TSP standards; and revisions to this regulation to reflect the manner in which these reductions are to be achieved; *or*

2. A detailed emission inventory of all fugitive dust sources in each nonattainment area, and the corresponding emission reductions achievable through the implementation of Regulation No. 9 for all sources, and the revisions to this regulation needed to make these reductions legally enforceable, *and*

3. The information specified above and revisions to Regulation No. 9 are submitted to the EPA within 150 days of the publication of this notice.

E. *Reasonable Further Progress.* RFP schedules were developed for Tulsa and Oklahoma Counties, and that portion of Mayes County designated as nonattainment, in order to indicate the actual rate at which TSP emission reductions will be achieved. These schedules also quantify graphically, a growth allowance for these areas. EPA considers the approval of these schedules to be contingent on the submittal of the additional information discussed above.

The State has committed to track RFP, through annual reporting, as detailed in the discussion on the ozone control strategy.

New Source Review—Section 172(b)(6)

The State of Oklahoma has revised Regulation No. 14, "Air Resources Management," so as to incorporate the requirements of Section 173 of the Act into its permit system. The State has also incorporated a Prevention of Significant Deterioration (PSD) permitting program into the provisions of this regulation. EPA has reviewed the revisions to Regulation No. 14 only for its consistency with Part D requirements of the Act. The issue of the State's PSD program will be addressed in a separate Federal Register notice. Based on its review, the EPA has noted the following deficiencies.

1. Subsection 14.313 must apply to major modifications as well as major sources.

2. Subsection 14.313(b) should be modified so as to ensure that all applicable emission limitations and standards under the Federal Clean Air Act are met in addition to those under the Oklahoma Clean Air Act.

3. RFP schedules developed by the State, indicate that the growth allowance is the amount by which emission reductions exceed reductions required to demonstrate attainment by the prescribed date, assuming no growth in stationary sources. Therefore, Subsection 14.313.c.(i) must be revised to reflect that emissions from all other new sources (minor as well as major) must be accounted for when determining the amount of the growth allowance that would be used by a proposed new or modified source.

EPA intends to propose approval of this portion of Regulation No. 14, as it pertains to nonattainment areas, on the condition that revisions are submitted within 150 days of publication of this notice.

Other Part D Requirements

The State has provided estimates of the manpower and funding resources needed to adequately support and carry out the requirements of the Act and a commitment is made to continue funding of the air program within the constraints of available resources and general priorities as envisioned by the State leadership.

The State has provided evidence of local government involvement and consultation as required under Section 174. These activities resulted in the Oklahoma Department of Health, entering into agreements with the Association of Central Oklahoma Governments (ACOG) and the Indian Nations Council of Government (INCOG) for development of the transportation control strategies for Oklahoma and Tulsa Counties, respectively. These Memorandums of Agreement are signed by the Oklahoma State Commissioner of Health who is empowered to enter into agreements with local governments or their designees to carry out provisions of the Oklahoma Public Health Code.

The State has included a brief analysis of the air quality, health, welfare, economic, energy, and social effects of the plan provisions chosen for each pollutant. Transcripts of the comments received at the public hearing are available for public inspection.

The State has submitted evidence that the State has adopted the necessary requirements in legally enforceable form.

The EPA considers the submittal of schedules, adopted regulations and memorandums of agreement, included in these revisions, to constitute a commitment by the State and other governmental bodies to implement and enforce the provisions of this plan.

This notice is issued under the authority of section 110 and 171 to 178 of the Clean Air Act, as amended, 42 U.S.C. §§ 7410 and 7501 to 7508.

Dated: June 11, 1979.

Myron O. Knudson,

Acting Regional Administrator.

[FR Doc. 79-22988 Filed 7-30-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR 17]

Endangered and Threatened Wildlife and Plants; Review of the Status of Jatropha Costaricensis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Review of status of one Costa Rican woody plant.

SUMMARY: Upon petition from a Costa Rican botanist, the Service is reviewing the status of one tree species from Costa Rica to determine if it should be listed as an Endangered or Threatened species. The botanist submitted substantial data with his petition to indicate that the plant may be threatened by various factors. These data are summarized in the following notice. The Service welcomes additional data on its status.

DATES: Information regarding the status of this species should be submitted on or before October 29, 1979.

ADDRESSES: Comments and data submitted in connection with this review should be sent to the Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Office of Endangered Species (703/235-1975).

SUPPLEMENTARY INFORMATION:

Background

The Service has received a petition from Sr. Luis J. Poveda of the Museo Nacional, San José, Costa Rica, indicating that *Jatropha costaricensis* is in danger of extinction.

Data concerning the status of this species, submitted in support of the petition, are as follows: The shrub to small tree occurs in dry open woodlands near Playas del Coco, Guanacaste, Costa Rica. This is a drought-deciduous vegetation formation of limited extent. The species is considered a phytoigeographically significant relict, which is restricted to an area of only a few acres. Its habitat is being destroyed by nearby housing, the trampling of cattle, and the cutting of trees.

A copy of the petition is available for examination during normal business hours at the Office of Endangered Species, 1000 N. Glebe Road, Arlington, Virginia, Suite 500.

The Service has determined that the petition presents substantial evidence warranting a review of the status of this species and hereby announces that it is reviewing the status of *Jatropha costaricensis* to determine whether or not it should be listed as an Endangered or Threatened species. Because it is a foreign species, there is no determination of Critical Habitat. This review is being conducted in compliance with Section 4 (c)(2) of the Endangered Species Act of 1973, as amended, which requires that, in the case of petitions, a review must be made and published prior to the initiation of any subsequent procedures for listing such species as Endangered or Threatened.

With this notice of review, the Service is inviting and requesting anyone who may have information on the species under consideration concerning its status, distribution, population trends, threats, or other pertinent data, to contact the Director. The Service will analyze all data that it now has, as well as any data that are obtained as a result of this review, and will take appropriate action concerning listing for the species.

This notice of review was prepared by Dr. Bruce MacBryde, Office of Endangered Species (703/235-1975).

Dated: July 24, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 79-23579 Filed 7-30-79; 8:45 am]

BILLING CODE 4310-55-M

MARINE MAMMAL COMMISSION

[50 CFR Part 530]

Procedures Supplementing the National Environmental Policy Act Regulations

AGENCY: Marine Mammal Commission.

ACTION: Notice of Proposed Procedures.

SUMMARY: This Notice proposes to adopt a new Part 530 of 50 CFR, consisting of the procedures set forth below, to supplement the National Environmental Policy Act (NEPA)

regulations promulgated by the Council on Environmental Quality and thereby implement the provisions of the NEPA as they apply to the functions and responsibilities of the Marine Mammal Commission.

DATES: Written comments may be submitted on or before July 31, 1979.

ADDRESS: All comments should be addressed to: Executive Director, Marine Mammal Commission, Room 307, 1625 I Street, NW., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Robert Eisenbud, General Counsel, Marine Mammal Commission, Room 307, 1625 I Street, NW., Washington, D.C. 20006, telephone (202) 653–6237.

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

Executive Order 11991 of May 24, 1977 directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR Part 1500–1508) on November 29, 1978 which are binding on all Federal agencies as of July 30, 1979. These regulations provide that each Federal agency shall, as necessary, adopt implementing procedures to supplement the regulations.

It is proposed to amend Chapter V, Marine Mammal Commission, of 50 CFR as follows:

PART 530—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.

§ 530.1 Purpose.

The purpose of this Part is to establish procedures which supplement the National Environmental Policy Act (NEPA) regulations and provide for the implementation of those provisions identified in § 1507.3(b) of the regulations which are applicable to the activities of the Commission in light of its statutory functions and responsibilities.

§ 530.2 Ensuring that environmental documents are actually considered in agency decision-making.

Section 1505.1 of the NEPA regulations contains requirements to ensure adequate consideration of environmental documents in agency decision-making. To implement these requirements, Commission officials shall:

(a) Consider all relevant environmental documents in evaluating proposals for agency actions;

(b) Ensure that all relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes;

(c) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating any proposal for action by the Commission which is likely to significantly affect the quality of the human environment; and

(d) Where an environmental impact statement (EIS) has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS. All Commission officials directly involved in developing, evaluating, and/or reaching decisions on proposed actions shall consider relevant environmental documents and comply with the applicable provisions of the NEPA process.

§ 530.3 Typical classes of action.

Section 1507.3(b)(2), in conjunction with § 1508.4, requires agencies to identify typical classes of action that warrant similar treatment under NEPA with respect to the preparation of EIS's or environmental assessments. As a general matter, the Commission's activities do not include actions for which EIS's or environmental assessments are required. Its activities involve:

(a) Consultation with and recommendations to other Federal agencies for actions relating to marine mammal protection and conservation for which an EIS or environmental assessment is either not required by the NEPA regulations or for which an EIS or environmental assessment is prepared by another Federal agency; and

(b) Research contracts relating to policy issues, biological-ecological data needed to make sound management decisions, and better methods for collecting and analyzing data. These activities are not, by themselves, major Federal actions significantly affecting the quality of the human environment and the Commission's activities are therefore categorically excluded from the requirement to prepare an EIS or environmental assessment except for proposals for legislation which are initiated by the Commission, for which the Commission shall develop environmental assessments or EIS's, as appropriate, in accordance with the NEPA regulations. The Commission shall independently determine whether an EIS or an environmental assessment is required where:

(i) A proposal for agency action is not covered by one of the typical classes of action above; or

(ii) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

§ 530.4 Environmental information.

Interested persons may contact the Office of the General Counsel for information regarding the Commission's compliance with NEPA.

Dated: July 24, 1979.

John R. Twiss, Jr.,
Executive Director.

[FR Doc. 79-23577 Filed 7-30-79; 8:45 am]
BILLING CODE 6820-31-M

Notices

Federal Register
Vol. 44, No. 148
Tuesday, July 31, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Plains Electric Generation & Transmission Cooperative, Inc.; Final Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Final Environmental Impact Statement in accordance with Section 102(2)(C) of the National Enviromental Policy Act of 1969, in connection with an anticipated loan guarantee for Plains Electric Generation and Transmission Cooperative, Inc., 2401 Aztec Road, N.E., Albuquerque, New Mexico 87107.

The anticipated financing assistance would provide Plains with the financing required for the construction of a 38 mile 345 kV transmission line between Plains' Taos substation, located in Taos County, New Mexico, and the Ojo substation of the Public Service Company of New Mexico, located in Rio Arriba County, New Mexico. The project also includes the construction of terminal facilities to permit initial operation of this line at 115 kV. This proposed project will provide additional transmission capacity to meet the projected future growth in peak electric demand of three of Plains' member distribution cooperatives located in the northern portion of Plains' service area.

Additional information may be secured by request submitted to Mr. Joe S. Zoller, Assistant Administrator, Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

The Final Environmental Impact Statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue, S.W., Washington, D.C., Room 2868 or at Plains Electric Generation and Transmission Cooperative, Inc., 2401 Aztec Road, N.E., Albuquerque, New Mexico 87107.

Final REA action may be taken with respect to this matter after thirty (30) days.

Any loan which may be made pursuant to this application will be subject to, and release of funds thereunder will be contingent upon, REA's reaching satisfactory conclusions with respect to environmental effects and final action will be taken only after compliance with Environmental Statement procedures required by the National Environmental Policy Act of 1969, and by other environmentally related statutes, regulations, Executive Orders, and Secretary's Memoranda.

Dated at Washington, D.C., this 12th day of July, 1979.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 79-23510 Filed 7-30-79; 8:45 am]

BILLING CODE 3410-15-M

Sunflower Electric Cooperative, Inc.; Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Draft Environmental Impact Statement in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with the proposed use of REA guaranteed loan funds by Sunflower Electric Cooperative, Inc., Hays National Bank Building, Hays, Kansas 67601 to finance the construction of proposed generation and transmission facilities in the State of Kansas. The facilities covered by this statement include the construction of a 280 MW coal-fired steam-electric generating plant near Holcomb, Kansas, and approximately 150 miles of 345 kV transmission line from Holcomb, Kansas, north to the Kansas-Nebraska state line in Decatur County, Kansas, and related substation facilities near Colby and Scott City, Kansas.

Additional information may be secured on request submitted to Mr. Joe S. Zoller, Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. Comments are particularly invited from State and local agencies, which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved from which comments have not been requested specifically.

Copies of the REA Draft Environmental Impact Statement have been sent to various Federal, State and local agencies, as outlined in the Council on Environmental Quality Guidelines. The Draft Environmental Impact Statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue, S.W., Washington, D.C., Rooms 1268, or at Sunflower's address indicated above.

Comments concerning the environmental impact of the construction proposed should be addressed to Mr. Zoller at the address given above. Comments must be received within sixty (60) days of the date of this notice to be considered in connection with the proposed action.

Final REA action, with respect to this matter (including any release of funds), will be taken only after REA has reached satisfactory conclusions, with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969, have been met.

Dated at Washington, D.C., this 20th day of July, 1979

Tom Burgum,

Acting Deputy Administrator, Rural Electrification Administration.

[FR Doc. 79-23509 Filed 7-30-79; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

[Order 79-7-166]

International Air Transport Association

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 24th day of July, 1979.

Order

Agreements adopted by the International Air Transport Association regarding conditions of carriage—cargo; Agreements CAB 2698, R-41; CAB 2699, R-49; CAB 2700, R-43; CAB 3119; CAB 7648, R-107; CAB 24475, R-4 and R-5, Docket 25280; CAB 25186, R-12, Docket 27573; CAB 25954, R-1, R-2, and R-3,

Docket 27573; CAB 26701, R-9; CAB 27886, R-3.

On May 15, 1979, the International Air Transport Association (IATA) filed Agreement CAB 27886, R-3 amending Resolution 600b, restating the conditions of carriage to appear on the back of air waybills. By Order 78-8-10, August 3, 1978, we approved (some conditionally) and disapproved provisions in IATA Resolutions 600b and 600j restating the conditions of carriage to appear on the back and front of air waybills. Additionally, we withdrew our 1949 approval of an earlier IATA resolution on the same subject matter.[1]

Agreement CAB 27886, R-3 deals with all, but one, of the provisions found objectionable in Order 78-8-10 and corrects the deficiencies. It fails to address Article (1)6 which provides that in determining a carrier's monetary liability for loss, damage or delay of part of a shipment, the weight to be taken into account shall be only the weight of the package or packages concerned. We conditioned our approval of this provision to provide that the chargeable weight shall be taken into account. As we stated in Order 78-8-10, chargeable weight, as distinguished from the actual weight of the shipment, is the weight used to assess transportation charges. Thus, in the case of light but bulky commodities, the carriers base their charges on an assumed higher weight to compensate for the space occupied. We concluded that the shipper who pays transportation charges based on an assumed higher weight should be covered by such higher weight, rather than the lesser actual weight. We noted that domestic cargo carriers base their liability on the chargeable weight.

We are not given any reasons for IATA's failure to deal with Article (1)6.[2] On the other hand, Article (1)6 is the only item still remaining unresolved in a proceeding which has been before us for a long time. Therefore, we shall prescribe substitute lanuuage for Article (1)6, adapted from the former domestic cargo rules tariff, which reads in pertinent part:

The weight used to determine the declared value of a shipment [or part thereof] shall be the same as that which is used to determine the transportation charge for such shipment.[3]

Order 78-8-10, issued prior to the effective date of the Airline Deregulation Act of 1978, bestowed automatic antitrust immunity under section 414 of the Act as it then read. Under the ADA, our approval of an agreement no longer automatically confers antitrust immunity. Rather, we may grant such relief under section 414 only if it is required in the public interest. Under the circumstances presented here, we find it would be in the public interest to grant antitrust immunity covering Resolutions 600b and 600j. These resolutions are a product of the IATA machinery approved and immunized in Order E-9305, June 15, 1955. In Docket 32851 we are reviewing that machinery to determine whether or not it should continue under our approval and immunization. Pending our decision in that docket, we will continue to consider IATA resolutions on a case-by-case basis, and the relief granted here is subject to the outcome or final action in Docket 32851.

Finally, there is the question of the stay of paragraphs (1) and (6) of Order 78-8-10. The conditions of carriage appearing on the back and front of air waybills now in use are based on the IATA resolution approved by us in 1949, and the carriers therefore have had antitrust immunity. Paragraphs (1) and (6) of Order 78-8-10 withdrew our approval of the earlier resolutions, thereby terminating the antitrust immunity. The problem now is the timing of the extension of the antitrust immunity to give the carriers an opportunity to use up their existing stock of waybills, and prepare, print and distribute new waybills. We find that a period of six months should be ample. The carriers have been on notice that this proceeding is drawing to a close, and presumably have not ordered extensive stocks of the old waybills. Moreover, the conditions of carriage now in use are based on our approval in 1949, and the effectiveness of the new conditions of carriage should not be delayed unduly. We shall, therefore, vacate the stay *pendente lite* granted by Order 79-6-47 and in lieu grant a stay of six months from the date of service of this order.

Accordingly, 1. We approve Resolution 600b, as approved by Order 78-8-10, and as amended by Agreement CAB 27886, R-3; [4]

2. We exempt IATA, its member air carriers, and any other person affected by this order from the operations of the antitrust laws, with regard to the subject matter of this order, as provided in section 414 of the Act;

3. We withdraw our conditional approval of Article (1)6 in Order 78-8-10, and order that Article (1)6 dealing with the weight to be taken into account in determining a carrier's monetary liability for loss, damage or delay shall be stated in the following language:

In case of loss, damage or delay the weight used to determine the value of a shipment, or part thereof, shall be the same as that which is used (or a pro rata share in the case of a part shipment loss, damage or delay) to determine the transportation charge for such shipment.

4. We vacate the stay granted by Order 79-6-47, and in lieu, we grant a stay of paragraphs (1) and (6) of Order 78-8-10 for a period of six months from the date of service of this order, until January 26, 1980.

We shall publish this order in the Federal Register.

By the Civil Aeronautics Board.

All members concurred.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-23383 Filed 7-30-79; 8:45 am]

BILLING CODE 6320-01-M

[1] See Order 78-11-146, November 30, 1978, granting a stay until June 5, 1979, of ordering paragraphs (1) and (6) of Order 78-8-10, dealing with the withdrawal of the 1949 approval. And see Order 79-6-47, granting a stay *pendente lite* to afford time to act on the instant amendments.

[2] Order 78-8-10 approved Article (1)6 "subject to the condition that the chargeable weight of the part or parts of the shipment lost, damaged or delayed shall be taken into account." We will withdraw our conditional approval.

[3] Airline Tariff Publishing Company, Agent, Official Air Freight Rules Tariff, No. CR2, CAB No. 331, First Revised Page 73.

[4] Except as provided in paragraph (3) below.

[Order 79-7-172]

Hughes Airwest, et al.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-7-172.

SUMMARY: The Board is proposing to grant nonstop authority between Baltimore-Washington International (BWI), Dulles International and Washington National Airports, on the one hand, and between and among Salt Lake City, Las Vegas and Phoenix, on the other, to Hughes Airwest, USAir, Ozark, Western and any other fit, willing and able applicant whose fitness can be established by officially noticeable data. However, since the Board had recently awarded authority in the Salt Lake City-Baltimore/Washington market to Ozark and Western and to Allegheny in the Salt Lake City-Washington market in another proceeding, it dismissed their applications for those markets in this proceeding.

The Board rejected an argument that it should decline to award authority at National Airport because all present slots have already been allocated, and the facilities are seriously overcrowded.

It reasoned that these current conditions were not valid reasons for restricting the applicants' operating authority. The choice of which airports to serve, the Board said, should not be limited by certificate restrictions. The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than August 31, 1979, a statement of objection, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than August 16, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket 36210, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Mark Atwood, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C., 20428 (202) 673-5333.

SUPPLEMENTARY INFORMATION: Objections should be served upon the following persons: Hughes Airwest, USAir, Ozark, and Western.

The complete text of Order 79-7-172 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-7-172 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: July 25, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-23584 Filed 7-30-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Deletions and Amendments to Systems of Records

AGENCY: Department of the Army.

ACTION: Notice of deletions and amendments to systems of records.

SUMMARY: The Army proposes to delete 3 and amend 5 systems of records subject to the Privacy Act of 1974. Specific changes to the systems being amended are set forth below, followed by the systems published in their entirety as amended.

DATE: The systems shall be amended as proposed without further notice on August 30, 1979, unless comments are received on or before August 30, 1979 which would result in a contrary determination and require republication for further comments.

ADDRESS: Any comments, including written data, views or arguments concerning the action proposed should be addressed to the System Manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Cyrus H. Fraker, The Adjutant General Center (DAAG-AMR-R), Department of the Army, 1000 Independence Avenue, SW, Washington, DC 20314; telephone 202/693-0973.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices, as prescribed by the Privacy Act, have been published in the Federal Register as follows:

FR Doc. 77-28225 (42 FR 50396) September 28, 1977.
FR Doc. 78-23953 (43 FR 38070) August 25, 1978.
FR Doc. 78-22562 (43 FR 40272) September 11, 1978.
FR Doc. 78-26732 (43 FR 42026) September 19, 1978.
FR Doc. 78-25819 (43 FR 42374) September 20, 1978.
FR Doc. 78-26699 (43 FR 43059) September 22, 1978.
FR Doc. 78-26996 (43 FR 43539) September 26, 1978.
FR Doc. 78-29130 (43 FR 47604) October 16, 1978.
FR Doc. 78-29211 (43 FR 48894) October 19, 1978.
FR Doc. 78-29982 (43 FR 49557) October 24, 1978.
FR Doc. 78-31795 (43 FR 52512) November 13, 1978.
FR Doc. 78-34586 (43 FR 58111) December 12, 1978.
FR Doc. 78-35523 (43 FR 59869) December 22, 1978.
FR Doc. 79-5788 (44 FR 11105) February 27, 1979.
FR Doc. 79-6621 (44 FR 12231) March 6, 1979.
FR Doc. 79-8787 (44 FR 17767) March 23, 1979.
FR Doc. 79-11350 (44 FR 22140) April 13, 1979.
FR Doc. 79-13252 (44 FR 24904) April 27, 1979.
FR Doc. 79-15909 (44 FR 29700) May 22, 1979.
FR Doc. 79-19958 (44 FR 37654) June 28, 1979.
FR Doc. 79-21771 (44 FR 41277) July 16, 1979.
FR Doc. 79-22112 (44 FR 41905) July 18, 1979.

Proposed amendments are not within the purview of the provisions of 5 USC 552(o) of the act which require the submission of a new or altered system report.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

July 26, 1979.

Deletions

A0412.10aDAIO

System name:

412.10 Public Inquiry Files (42 FR 50477) September 28, 1977.

Reason:

Records are now covered by amended System Notice A0401.07aOSA Media Contact Files published below.

A0412.11aDAIO

System name:

412.11 Army-Community Relations Files (42 FR 50478) September 28, 1977.

Reason:

This is not a system of records subject to the Privacy Act (Title 5 U.S.C., Section 552a). The information is not retrieved by the name of an individual or any other personal identifier.

A0412.11bDAIO

System name:

412.11 Roster of Civilian Community Leaders (42 FR 50478) September 28, 1977.

Reason:

Records are now covered by amended System Notice A0412.14aOSA Biography Files published below.

Amendments

A0401.07aDAIO

System name:

401.07 Media Contact Files (42 FR 50462) September 28, 1977.

Changes:

System identification:

Change "A0401.07aDAIO" to "A0401.07aOSA".

Delete all references to "Office of the Chief of Information", "information officers", or "information office(s)" and substitute: "Office of the Chief of Public Affairs", "public affairs officers", or "public affairs office(s)", respectively.

System location:

Decentralized Segments: Add: "public affairs offices of major Army commands and their subordinate units; and Office, Chief of Engineers Public Affairs Office,

and all Corps of Engineers field operating public affairs offices."

A0401.07bDAIO

System name:

401.07 Medal of Honor Recipient Files (Vietnam Era) (42 FR 50463) September 28, 1977.

Changes:

System identification:

Change "A0401.07bDAIO" to "A0401.07bOSA".

Delete all references to "Office of the Chief of Information" or "information offices" and substitute: "Office of the Chief of Public Affairs" or "public affairs offices", respectively.

A0412.05aDAIO

System name:

412.05 Press Interest Reference Files (42 FR 50476) September 28, 1977.

Changes:

System identification:

Change "A0412.05aDAIO" to "A0412.05aOSA".

Delete all references to "Office of the Chief of Information", "information officers", or "information offices" and substitute: "Office of the Chief of Public Affairs", "public affairs officers", or "public affairs offices", respectively.

System location:

Decentralized Segments: Add: "'Office, Chief of Engineers Public Affairs Office, and all Corps of Engineers field operating public affairs offices."

A0412.14aDAIO

System name:

412.14 Biography Files (42 FR 50478) September 28, 1977.

Changes:

System identification:

Change "A0412.14aDAIO" to "A0412.14aOSA".

System location:

Delete entry and substitute: "Primary System: Public Information Division, Office of the Chief of Public Affairs, Headquarters, Department of the Army (SAPA–PI), Washington, DC 20310.

Decentralized Segments: New York Branch, Office of the Chief of Public Affairs, United States (US) Army, 663 Fifth Ave., New York, NY 10022; Los Angeles Branch, Office of the Chief of Public Affairs, US Army, 11000 Wilshire Blvd, Suite 10104, Los Angeles, CA 90024; public affairs offices of major Army commands and subordinate units; and Office, Chief of Engineers Public Affairs Office, and Corps of Engineers field operating public affairs offices."

Record access procedures:

Delete the third paragraph.

A0412.18aDAIO

System name:

412.18 Correspondence (Civilian Aides to the Secretary of the Army) (42 FR 50479) September 28, 1979.

Changes:

System identification:

Change "A0412.18aDAIO" to "A0412.18aOSA".

Delete all references to "Office of the Chief of Public Information" and "information offices" and substitute: "Office of the Chief of Public Affairs" or "public affairs offices", respectively.

System manager(s) and address:

Delete entry and substitute: "Office, Secretary of the Army, The Pentagon, Washington, DC 20310."

A0401.07aOSA

SYSTEM NAME:

401.07 Media Contact Files

SYSTEM LOCATION:

Primary System: Public Information Division, Office of the Chief of Public Affairs, Headquarters, Department of the Army (SAPA–PI), Washington, DC 20310.

Decentralized Segments: New York Branch, Office of the Chief of Public Affairs, United States (US) Army, 663 Fifth Ave, New York, NY 10022; Los Angeles Branch, Office of the Chief of Public Affairs, US Army, 11000 Wilshire Blvd, Suite 10104, Los Angeles, CA 90024; public affairs offices of major Army commands and their subordinate units; and Office, Chief of Engineers Public Affairs Office, and all Corps of Engineers field operating public affairs offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Journalists, authors, editors, columnists, researchers, representatives of the news media, congressmen and other public figures who demonstrate a consistent interest in Army-related subjects.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain name, business address, telephone number, and news media affiliation. May also contain clippings, book reviews, interview reports, query sheets, memoranda and/or correspondence relating to past actions, and biographical outlines.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C., Section 3012.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To contact journalists and writers to provide information or leads relevant to their interests; to advise members of the Army staff who are considering requests to grant interviews of the interests, experience, and affiliation of journalists; to orient new members of the public affairs office staff to the writing styles, interests, and categories of individuals within this file system; and to brief public affiars officers in the Department of Defense, other military services, and subordinate commands about the interests, experience, and categories of individuals within this file system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card index or looseleaf paper directories; paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of individual.

SAFEGUARDS:

Buildings employ security guards. Records are maintained in security containers and are accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are maintained as long as those individuals mentioned are involved with Army public affairs officers. Records are routinely destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from: Headquarters, Department of the Army (SAPA–PI), Room 2E–641, The Pentagon, Washington, DC 20310, Telephone: Area Code 202/695–5136.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Headquarters, Department of the Army (SAPA–PI), Room 2E–641, The Pentagon, Washington, DC 20310.

Written requests should include a notarized statement of identity.

Personal visits may be made to any of the three Army Public Affairs Offices (Washington, New York, or Los Angeles) where the requester is recognized and/or can provide acceptable identification.

CONTESTING RECORD PROCEDURES:

The Army's rules for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Rosters of Pentagon correspondents prepared by the Office of the Assistant Secretary of Defense (Public Affairs); published directories of media contacts; query sheets and interview reports prepared by public affairs officers; clippings from published sources; and memoranda and correspondence between Army personnel and individuals contained within the file, or between Army personnel concerning individuals contained within the file system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0401.07bOSA

SYSTEM NAME:

401.07 Medal of Honor Recipient Files (Vietnam Era)

SYSTEM LOCATION:

Primary System: Public Information Division, Office of the Chief of Public Affairs, Headquarters, Department of the Army (HQDA) (SAPA-PI), Washington, DC 20310.

Decentralized Segments: New York Branch, Office of the Chief of Public Affairs, United States (US) Army, 663 Fifth Ave., New York, NY 10022; and Los Angeles Branch, Office of the Chief of Public Affairs, US Army, 11000 Wilshire Blvd., Suite 10104, Los Angeles, CA 90024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, discharged, retired, and deceased Army members who received the Medal of Honor during the period of the Vietnam War.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain photograph, statement of service, award citation, and copy of the ceremonial program at the time of the award.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C., Section 3012.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to queries from the press and the public relating to the individuals within the file, and from the Office of the Assistant Secretary of Defense (Public Affairs), other military services, other Army staff agencies and subordinate commands for information about Medal of Honor recipients.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of individual.

SAFEGUARDS:

Buildings employ security guards. Files are maintained in security containers and are accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Files are maintained as long as individual is likely to be a recurring subject of press interest. Eventually, files will be donated to the Congressional Medal of Honor Society, 38 Fallon Circle, Braintree, MA 02184.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from: Headquarters, Department of the Army (SAPA-PI), Room 2E-641, The Pentagon, Washington, DC 20310, Telephone: Area Code 202/695-5136.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Headquarters, Department of the Army (SAPA-PI), Room 2E-641, The Pentagon, Washington, DC 20310.

Written requests should include a notarized statement of indentity.

Personal visits may be made to any of the three Army Public Affairs Offices (Washington, New York, or Los Angeles). Presentation of acceptable identification is required.

CONTESTING RECORD PROCEDURES:

The Army's rules for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Statements of service, awards, citations, and photographs from the US Army Military Personnel Center or the National Personnel Records Center; ceremonial programs for the presentation prepared by the US Army Office of the Director of the Army Staff, Protocol Office, HQDA.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0412.05aOSA

SYSTEM NAME:

412.05 Press Interest Reference Files

SYSTEM LOCATION:

Primary System: Public Information Division, Office of the Chief of Public Affairs, Headquarters, Department of the Army (HQDA) (SAPA-PI), Washington, DC 20310.

Decentralized Segments: New York Branch, Office of the Chief of Public Affairs, United States (US) Army, 663 Fifth Ave., New York, NY 10022; Los Angeles Branch, Office of the Chief of Public Affairs, US Army, 11000 Wilshire Blvd., Suite 10104, Los Angeles, CA 90024; public affairs offices of major and subordinate commands to HQDA; Headquarters, First, Fifth, and Sixth Armies; major active installations, worldwide; and Office, Chief of Engineers Public Affairs Office, and all Corps of Enginees filed operating public affairs offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active, retired, and discharged Army members and civilian employees who are, have been, or are likely to again become the subject of press interest.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain miscellaneous documents depending on the reason for the individual coming to the attention of the press. Most common items are query sheets, fact sheets, statements of service, serious incident reports, copies or extracts from investigative reports news clippings, memoranda, and correspondence relating to the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C., Section 3012.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to queries from the press relating to individuals concerned and from the Office of the Assistant

Secretary of Defense (Public Affairs) and other agencies or commands in the Army for information about the individuals, particularly with respect to the press interest displayed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of individual.

SAFEGUARDS:

Buildings employ security guards. Records are maintained in security containers and are accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are maintained as long as individual seems likely to be a recurring subject of press interest. Records are routinely destroyed thereafter.

SYSTEM MANAGER(S) AND ADDRESS:

The Office of the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from: Headquarters, Department of the Army (SAPA–PI), Room 2E–641, The Pentagon, Washington, D.C. 20310; Telephone: Area Code 202/695–5136.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Headquarters, Department of the Army (SAPA–PI), Room 2E–641, The Pentagon, Washington, D.C. 20310.

Written requests should include a notarized statement of identity.

Personal visits may be made to any of the three Army Public Affairs Offices (Washington, New York, or Los Angeles). Presentation of acceptable identification is required.

CONTESTING RECORD PROCEDURES:

The Army's rules for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Query sheets and fact sheets filed by staff public affairs officers; statements of service from the U.S. Army Military Personnel Center or National Personnel Records Center; serious incident reports through information channels from originating commands; clippings from published media; copies or extracts of investigative reports from investigating agencies to include U.S. Army Inspector General, U.S. Army Criminal Investigation Command, and U.S. Army Assistant Chief of Staff for Intelligence; and memoranda and correspondence from miscellaneous sources relating to the individual case.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0412.14aOSA

SYSTEM NAME:

412.14 Biography Files.

SYSTEM LOCATION:

Primary System: Public Information Division, Office of the Chief of Public Affairs, Headquarters, Department of the Army (SAPA–PI), Washington, D.C. 20310.

Decentralized Segments:

New York Branch, Office of the Chief of Public Affairs, United States (U.S.) Army, 662 Fifth Ave., New York, N.Y. 10022; Los Angeles Branch, Office of the Chief of Public Affairs, U.S. Army, 11000 Wilshire Blvd., Suite 10104, Los Angeles, CA 90024; public affairs offices of major Army commands and subordinate units; and Office, Chief of Engineers Public Affairs Office, and all Corps of Engineers field operating public affairs offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Leading Department of the Army (DA) military and civilian personnel and other important personalities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain biographical material to include biographies, photographs, newspaper clippings, and related documents. Name, grade, social security number (SSN), and summary of service and outstanding achievements may also be shown.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C., Section 3012.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to queries from the press relating to individuals concerned and from other Army agencies or commands for information about the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of individual.

SAFEGUARDS:

File areas are locked when not occupied by supervisory personnel. Only authorized personnel are allowed access to files.

RETENTION AND DISPOSAL:

Records are maintained for 2 years following retirement, transfer, separation or death of the individual concerned.

SYSTEM MANAGER(S) AND ADDRESS:

Commander/supervisor of organization maintaining biographical data.

NOTIFICATION PROCEDURE:

Information may be obtained from commander/supervisor of organization to which the individual is assigned or employed. Individual must provide full name.

RECORD ACCESS PROCEDURES:

Requests should be addressed to appropriate commander or supervisor. Official mailing addresses are in the Department of Defense Directory in the appendix to the Department of the Army system notices.

Written requests should include full name of individual and SSN.

For personal visits, individual must be able to provide acceptable identification such as driver's license, military or civilian identification card.

CONTESTING RECORD PROCEDURES:

The Army's rules for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Clippings from published media, published biographical data from DA and other agencies and commands.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0412.18aOSA

SYSTEM NAME:

412.18 Correspondence (Civilian Aides to the Secretary of the Army)

SYSTEM LOCATION:

Office, Staff Coordinator for Civilian Aides to the Secretary of the Army Program, Office of the Chief of Public Affairs, Office of the Secretary of the Army (OSA); public affairs offices of major and subordinate commands to Headquarters, Department of the Army, and Headquarters, First, Fifth, and Sixth Armies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian Aides actively affiliated with the Civilian Aides Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain correspondence between the Secretary of the Army and Civilian Aides currently active with the Civilian Aides Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C., Section 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Staff Coordinator, Civilian Aides Program, Office of the Chief of Public Affairs: To maintain a record of correspondence.

OSA: Recipient of correspondence.

Department of the Army Staff agencies: To coordinate requests, provide information, and accomplish tasks.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of Civilian Aide.

SAFEGUARDS:

Buildings employ security guards. Records are maintained in security containers and are accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Retained during tenure of individual Civilian Aide and destroyed thereafter.

SYSTEM MANAGER(S) AND ADDRESS:

Office, Secretary of the Army, The Pentagon, Washington, D.C. 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from: Office, Secretary of the Army (SASA–CA) Room 2E–673, The Pentagon, Washington, D.C. 20310, Telephone: Area Code 202/697–8948.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Office, Secretary of the Army (SASA–CA), Room 2E–673, The Pentagon, Washington, D.C. 20310.

Written requests for information should contain the full name of the individual, current address, and telephone number.

For personal visits, the individual should provide acceptable identification such as driver's license or employee identification card.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Activities of a personal nature provided by the individual in connection with his duties as a Civilian Aide to the Secretary of the Army; and correspondence originated by SYSMANAGER in reply or providing information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 79–23622 Filed 7–30–79; 8:45 am]
BILLING CODE 3710–08–M

Engineers Corps

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Local Protection Project (Levee) on the Scioto River at North Chillicothe, Ohio

July 1979.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The proposed plan for the North Chillicothe area consists of a levee generally located on the left descending bank of the Scioto River which will provide flood protection against the Standard Project Flood for the residents of that community. The main features of the plan will include a levee with gate closures, pumping facilities to handle interior drainage, recreation facilities consisting of hiking, biking, and nature trails, a boat ramp and overlook development oriented toward day-use type recreation.

2. Other reasonable alternatives considered include a plan that best serves the objectives of National Economic Development while making a major contribution to social well-being; a plan which best meets the objectives of Environmental Quality and a plan which involves non-structural measures.

3. The descriptions which follow outline the scoping process being used for the North Chillicothe study.

a. The public involvement program began in May 1971 with an initial public meeting in Chillicothe, Ohio. Following this initial meeting, local and Congressional interests requested a public meeting which was held in April 1975 to discuss Chillicothe flood problems. The meeting resulted in the expression of a need for flood protection in the north section of Chillicothe, Ohio. Since this meeting, the U.S. Army Corps of Engineers has conducted a number of meetings, interviews, discussions, and correspondence with local and Congressional interests. A final public meeting is scheduled to be held in Chillicothe, Ohio, during December 1979.

b. The DEIS will contain an analysis of the following resource factors: archeological and historical resources, aesthetic resources, recreational resources, aquatic and riparious resources, socio-economic resources and agricultural resources. These resources will be significant for comparisons of impacts of the proposed plan and the reasonable alternative plans.

c. During the study process, the United States Fish and Wildlife Service, the United States Soil Conservation Service, the Ohio Department of Natural Resources and local governmental units have contributed to the study process. As a part of the public involvement and study management process, other affected Federal, State and local agencies and interested private organizations and individuals have been invited to provide suggestions and comments.

4. The draft survey report and DEIS are being finalized and no additional scoping meetings are scheduled prior to distribution of the report and DEIS. However, additional workshops will be conducted during this period if study findings indicate a significant need.

5. It is estimated that the draft survey report and DEIS will be made available to the public in November 1979.

Questions about the proposed action and DEIS can be answered by: Galen E. Gill, Study Manager, Plan Formulation Branch, Huntington District, U.S. Army Corps of Engineers, Huntington, West Virginia 25721.

Dated: July 23, 1979.

James H. Higman,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 79-23556 Filed 7-30-79; 8:45 am]

BILLING CODE 3710-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Marbob Energy Corp.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

EFFECTIVE DATE: June 27, 1979.

COMMENTS BY: August 30, 1979.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District of Enforcement, Department of Energy, Economic Regulatory Administration, 2626 W. Mockingbird Lane, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager, Southwest District of Enforcement, Department of Energy, Economic Regulatory Administration, 2626 W. Mockingbird Lane, P.O. Box 35228, Dallas, Texas, phone (214) 767-7751.

SUPPLEMENTARY INFORMATION: On June 27, 1979, the Office of Enforcement of the ERA executed a Consent Order with Marbob Energy Corporation of Artesia, New Mexico. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because the DOE and Marbob Energy Corporation wish to expeditiously resolve this matter as agreed and to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with Marbob Energy Corporation effective as of the date of its execution by the DOE and Marbob Energy Corporation.

I. The Consent Order

Marbob Energy Corporation with its home office located in Artesia, New Mexico, is a firm engaged in the production and sale of crude oil, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement, ERA, and Marbob Energy Corporation entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the audit was September 1, 1973 through May 31, 1977, and it included all sales of crude oil to Navajo Refining Company.

2. Marbob Energy Corporation improperly applied the provisions of 10 CFR Part 212, Subpart D when determining the prices to be charged for its crude oil, as a consequence, the above firm was overcharged on some of its purchases.

3. Marbob Energy Corporation agrees to refund to the DOE $34,000.00 plus interest within 36 months of the effective date of the Consent Order.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Marbob Energy Corporation agrees to refund in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I. 1. above, the sum of $34,000.00 within 36 months of the effective date of the Consent Order. The Refund shall be delivered to the Assistant Administrator for Enforcement ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amount in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily to the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of the potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager, Southwest District of Enforcement, Department of Energy, Economic Regulatory Administration, 2626 West Mockingbird Lane, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling (214) 767-7751.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Marbob Energy Corporation Consent Order." We will consider all comments we receive by 4:30 p.m., local time, thirty days after publication. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas, on the 23rd day of July, 1979.

Wayne I. Tucker,

District Manager, Southwest District of Enforcement.

[FR Doc. 79-23603 Filed 7-30-79; 8:45 am]

BILLING CODE 6450-01-M

Newmont Oil Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective Date: July 19, 1979.

COMMENTS BY: August 30, 1979.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235—(214) 767–7751.

SUPPLEMENTARY INFORMATION: On July 19, 1979, the Office of Enforcement of the ERA executed a Consent Order with Newmont Oil Company of Houston, Texas. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Newmont Oil Company, with its office located in Houston, is a firm engaged in crude oil production, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of crude oil sales, the Office of Enforcement, ERA, and Newmont Oil Company, entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the audit was September 1973, through December 1977, and it included all sales of crude oil which were made during that period.

2. Newmont Oil Company improperly applied the provisions of 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subpart D, when determining the prices to be charged for crude oil; and as a consequence, charged prices in excess of the maximum lawful sales prices resulting in overcharges to its customers.

3. In order to expedite resolution of the disputes involved, the DOE and Newmont Oil Company have agreed to a settlement in the amount of $60,000.00. The negotiated settlement was determined to be in the public interest as well as the best interests of the DOE and Newmont Oil Company.

4. Because the sales of crude oil were made to refiners and the ultimate consumers are not readily identifiable, the refund will be made through the DOE in accordance with CFR Part 205, Subpart V as provided below.

5. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Newmont Oil Company agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $60,000.00 on or before September 17, 1979. Refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order. You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling (214) 767–7751.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Newmont Oil Company Consent Order." We will consider all coments we receive by 4:30 p.m., local time, on August 30, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 24th day of July, 1979.

Wayne I. Tucker,

District Manager for Enforcement, Southwest District Economic Regulatory Administration.

[FR Doc. 79-23604 Filed 7-30-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 79-CERT-054]

Orange & Rockland Utilities, Inc.; Certification of Eligible Use of Natural Gas To Displace Fuel Oil

Orange and Rockland Utilities, Inc. (Orange and Rockland) filed an application for certification of an eligible use of natural gas to displace fuel oil at its Lovett Plant and/or Bowline Point generating facilities in Rockland County, New York, with the Administrator of the Economic Regulatory Administration pursuant to

10 CFR Part 595 on June 27, 1979. Notice of that application was published in the Federal Register (44 FR 40550, July 11, 1979) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

The Administrator has carefully reviewed Orange and Rockland's application in accordance with 10 CFR Part 595 and the policy considerations expressed in the Interim-Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas for Fuel Oil Displacement (44 FR 20398, April 5, 1979). The Administrator has determined that Orange and Rockland's application satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted the certification and transmitted that certification to the Federal Energy Regulatory Commission. A copy of the transmittal letter and the actual certification are appended to this notice.

Issued in Washington, D.C., July 25, 1979.

Barton R. House,

Acting Deputy Administrator, Economic Regulatory Administrator.

Appendix I

Department of Energy,
Washington, D.C.

Mr. Kenneth F. Plumb,
Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C.

Re ERA Certification of Eligible Use, ERA Docket No. 79–CERT–054, Orange & Rockland Utilities, Inc.

Dear Mr. Plumb: Pursuant to the provisions of 10 CFR Part 595, I am hereby transmitting the enclosed certification of an eligible use of natural gas to displace fuel oil to the Commission. This certification is required by the Commission as a precondition to interstate transportation of fuel oil displacement gas in accordance with the authorizing procedures in 18 CFR Part 284, Subpart F (FERC Order No. 30, 44 FR 30323, May 25, 1979). As noted in the certificate, it is effective for one year from the date of issuance, unless a shorter period of time is required by 18 CFR Part 284, Subpart F. A copy of the enclosed certification is also being published in the Federal Register and provided to the applicant.

Should the Commission have any further questions, please contact Mr. Finn K. Neilsen, Director, Import/Export Division, Economic Regulatory Administration, 2000 M Street, NW., Room 4126, Washington, D.C. 20461, telephone (202) 254–8202. All correspondence and inquiries regarding this certification should reference ERA Docket No. 79–CERT–054.

Sincerely,

Barton R. House,

Acting Deputy Administrator, Economic Regulatory Administration.

Enclosure.

Certification by the Economic Regulatory Administration to the Federal Energy Regulatory Commission of the Use of Natural Gas for Fuel Oil Displacement by the Orange and Rockland Utilities, Inc.

ERA Docket No. 79–CERT–054

Application for Certification. Pursuant to 10 CFR Part 595, Orange and Rockland Utilities, Inc. (Orange and Rockland), filed an application for certification of an eligible use of up to 50,000 Mcf of natural gas per day at its Lovett Plant and/or Bowline Point generating facilities in Rockland County, New York, with the Administrator of the Economic Regulatory Administration (ERA) on June 27, 1979. The application states that the eligible seller of the gas is the East Tennessee Natrual Gas Company (East Tennessee) and that the gas will be transported by the Tennessee Gas Pipeline Company. The application and supplemental information indicate, among other things, that the natural gas will be used to displace approximately 600,000 barrels of No. 6 fuel oil (.37% sulfur) from July 1, 1979–October 31, 1979, and that neither the gas nor the displaced fuel oil will be used to displace coal in the applicant's facilities.

Certification. Based upon a review of the information contained in the application, as well as other information available to ERA, the Administrator hereby certifies, pursuant to 10 CFR Part 595, that the use of up to 50,000 Mcf of natural gas per day at Orange and Rockland's Lovett Plant and/or Bowline Point generating facilities purchased from East Tennessee is an eligible use of gas within the meaning of 10 CFR Part 595.

Effective Date. This certification is effective upon the date of issuance, and expires one year from that date, unless a shorter period of time is required by 18 CFR Part 284, Subpart F. It is effective during this period of time for the use of up to the same certified volume of natural gas at the same facilities purchased from the same eligible seller.

Issued in Washington, D.C. on July 25, 1979.

Barton R. House,

Acting Deputy Administrator, Economic Regulatory Administration.

[FR Doc. 79-23600 Filed 7-30-79; 8:45 am]

BILLING CODE 6450-01-M

Gas Utility Rate Design Conferences

Notice is hereby given that public conferences to discuss the gas utility rate design study required by the Public Utility Regulatory Policies Act of 1978 will be held August 9 and 10, 1979, at the Department of Energy, 12th and Pennsylvania Avenue, NW., Washington, D.C. Room 3000A.

Representatives of the natural gas industry, residential consumers, small commercial users, industrial and large commercial users have been invited to attend these conferences. These invited participants have been asked for oral comments. Questions or comments will be heard from the audience as time permits.

The conferences, schedules for which are shown below, will be informal and open to the public. Seating will be made available on a first-come first-served basis.

Schedule

Natural Gas Industry, August 9, 9:00 a.m.–12:00 noon.
Industrial and large commercial users, August 9, 1:30 p.m.–4:30 p.m.
Consumers/small commercial, August 10, 9:30 a.m.–12:00 noon.

Transcripts of the conferences will be made available for public review and duplication at the Freedom of Information public reading room, Room GA–152 Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday except Federal holidays.

The Chairman for the conferences is Stephen S. Skjei, Department of Energy, Economic Regulatory Administration, Office of Utility Systems, Washington, D.C.

Dated: July 27, 1979.

Jerry L. Pfeffer,

Administrator, for Utility Systems, Economic Regulatory Administration.

[FR Doc. 79-23743 Filed 7-30-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP79–76]

Cities Service Gas Co.; Order Accepting for Filing and Suspending Rate Increase Subject to Conditions and Granting Interventions

July 20, 1979.

On June 22, 1979, Cities Service Gas Company (Cities) filed revised tariff sheets [1] under section 4(e) of the Natural Gas Act designed to increase jurisdictional annual revenues by $33,217,740. The increased rates are predicated on a test period based on actual costs for the twelve months ending February 28, 1979, as adjusted for known changes in costs which are expected to be incurred by the end of

[1] Fifth Revised Sheet No. 6 and First Revised Sheet Nos. 7, 8, 9, 10, 11, 12, and 43 to Original Volume No. 1, First Revised Sheet No. 91 to Original Volume No. 2 of Cities' FERC Gas Tariff.

the test period on November 30, 1979. Cities proposes a July 23, 1979, effective date.

In the proposed rates, Cities has reflected increases in plant, operating costs, and taxes. The company requests an overall return of 12.56 percent which includes an allowance of 14.5 percent on common equity. Cities has used the *United* method of rate design, but has classified and allocated its costs according to the *Seaboard* [2] method. In addition to the rate increase request, Cities has filed tariff sheets eliminating its presently effective base-excess rate design and replacing it with a summer-winter design applicable to service under Rate Schedules F, C, I and LVS.

Public notice of the filing was issued on June 28, 1979, providing for protests or petitions to intervene to be filed on or before July 13, 1979. Petitions to intervene were filed by parties listed in Appendix A. All have demonstrated an interest in the proceeding which justifies their participation. Accordingly, intervention to all parties listed shall be granted.

Based upon a review of Cities' filing, the Commission finds that the proposed change in rates sought in this filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept Cities' proposed rate increase for filing, suspend its effectiveness for five months until December 23, 1979, at which time it may become effective subject to refund and the conditions stated below. The Commission shall also set the matter for hearing.

In Opinion No. 24,[3] the Commission directed Cities to classify and allocate costs according to the *United* method and specifically rejected the *Seaboard* method employed by the company in this filing. In Docket No. RP79–4, Cities most recent rate increase filing, [4] the Company reflected the *Seaboard* method and the Commission summarily disposed of the issue on its merits in the suspension order. Cities was directed to file revised tariff sheets under the *United* method of cost allocation and classification.

Cities in its current filing states that it has no curtailment on an annual or peak day. However, even if this fact is true, it is not, standing alone, a change in material fact or circumstances warranting a change in cost allocation and classification from that adopted in Opinion No. 24. A review of the filing shows that Cities will depend upon large storage withdrawals to meet peak day demand. Cities' annual sales figures show a 19 percent decrease from those claimed in Docket No. RP74–4. In other words, the factors which prompted the Commission to apply the *United* formula in Opinion No. 24 continue to prevail in this filing. No useful purpose would be served by relitigating this issue in this docket.[5] It is appropriate, therefore, to summarily dispose of this issue on the merits without proceeding to an evidentiary hearing. Cities is directed to file revised tariff sheets reflecting the *United* method of cost classification and cost allocation.

As it is Commission policy to permit inclusion in rate base of only the costs of facilities which are used and useful to the ratepayers, Cities cannot include the costs of its scheduled plant additions if they are not in service by the time the proposed rates go into effect. However, we shall grant waiver of § 154.63(e)(2)(ii) of the Commission's regulations and accept for filing the present tariff sheets reflecting the cost of these facilities, conditioned upon Cities filing revised tariff sheets to eliminate costs associated with any facilities not in service on or before November 30, 1979. Cities is also directed to file revised tariff sheets to reflect the actual balance of advance payments as of November 30, 1979, provided that the inclusion of a higher advance payments balance shall not be permitted to increase the level of the original suspended rates. Waiver of § 154.63(e)(2)(ii) is granted upon the condition that Cities shall not be permitted to make offsetting adjustments other than those pursuant to Commission approved tracking provisions, those adjustments required by this order, and those required by other Commission orders.

The proposed rates and the underlying cost of service for the test period reflect a weighted average cost of purchased gas of 83.53 cents per Mcf and a GRI Funding unit of 3.5 mills per Mcf. The cost of purchased gas has been computed consistent with the requirements of Order No. 16. Cities states that it will file revised tariff sheets to reflect subsequent changes in purchased gas costs authorized by the Commission and to reflect the GRI surcharge in effect as of the date the proposed rates become effective.

The Commission Orders: (A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 7, 8 and 15 thereof, and the Commission's regulations, a public hearing shall be held concerning the lawfulness of the rates proposed by Cities.

(B) Pending hearing and decision, and subject to the conditions of Ordering Paragraph (C), Cities' proposed Fifth Revised Sheet No. 6 and First Revised Sheet Nos. 7, 8, 9, 10, 11, 12 and 43 to Original Volume No. 1 and First Revised Sheet No. 91 to Original Volume No. 2 of Cities' FERC Gas Tariff are accepted for filing, and suspended for five months until December 23, 1979, at which time they may become effective subject, to refund, in the manner prescribed by the Natural Gas Act, subject to the conditions set forth below.

(C) Waiver of § 154.63 (e)(2)(ii) is granted upon the condition that Cities file revised tariff sheets to reflect: (1) the elimination of those costs associated with facilities not in service on or before November 30, 1979; (2) the current cost of purchased gas reflected in Cities' most recent PGA filing prior to the effective date of the proposed rates; (3) the actual balance of advance payments in Account 166 as of November 30, 1979, provided that the inclusion of a higher actual balance of advance payments shall not be permitted to increase the overall level of the original suspended rates; and(4) the effective GRI Funding Unit on the effective date of the increased rates. This waiver is granted upon the further condition that Cities shall not be permitted to make offsetting adjustments to those suspended rates except for those adjustments made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those adjustments required by other Commission orders.

(D) The revised tariff sheets discussed in Ordering Paragraph (C) above shall reflect the *United* method of cost classification, allocation and rate design.

(E) Staff shall serve top sheets on or before October 22, 1979.

(F) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (18 CFR 3.5(d)) shall convene a settlement conference in this proceeding to be held within 10 days after the service of Staff's top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426. The

[2] *Atlantic Seaboard Corporation* 11 F.P.C. 43 (1952).

[3] *Cities Service Gas Company*, Opinion No. 24, issued August 29, 1978 in Docket No. RP74–4 (mimeo at 7–15) *Reh. den.* Opinion No. 24–A, issued October 31, 1978, *appeal pend.* Case No. 78–2009, 10th Cir.

[4] The filing was subsequently withdrawn. *See* suspension order issued November 22, 1978; *reh. den.*, January 22, 1979; order permitting withdrawl issued June 12, 1979.

[5] *Panhandle Eastern Pipeline Company* v. *FPC*, 236 F. 2d 606 (3rd Cir. 1956); See also: *Citizens of Allegan County, Inc.* v. *FPC*, 414 F. 2d 1125 (D.C. Cir. 1969).

Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary and to rule on all motions (except motions to sever, consolidate or dismiss) as provided for in the rules of practice and procedure.

(G) The petitioners to intervene listed in Appendix A to this order shall be permitted to intervene in this proceeding subject to the Commission's rules and regulations; *Provided, however,* That the participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in the petitions to intervene; *And provided, further,* That the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding.

By the Commission.

Kenneth F. Plumb,

Secretary.

Appendix A

1. Union Gas System, Inc.
2. Midwest Gas Users Association.
3. The Gas Service Company.
4. General Motors Corporation.
5. City Group Gas Defense Association.
6. Colorado Interstate Gas Company.

[FR Doc. 79-23552 Filed 7-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket CP79-370]

Citizens' Alliance v. National Fuel Gas Co., et al.; Granting Extension of Time

July 23, 1979.

On July 11, 1979, a motion for extension of time to answer the complaint in this proceeding was filed by the National Fuel entities and individuals named as defendants. Consolidated Gas Supply Corporation and Tennessee Gas Pipeline Company also filed motions for extensions on July 18, 1979 and July 19, 1979, respectively. The motions state that additional time is necessary to review the allegations in the complaint.

Upon consideration, notice is hereby given that the time for filing answers to the complaint is extended to and including August 27, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-23553 Filed 7-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. GP 79-48]

Geological Survey, New Mexico; Preliminary Finding

July 23, 1979.

United States Geological Survey (New Mexico), § 108 NGPA Determinations, San Jacinto No. 4 Well, JD No. 79-7926, Red Mac No. 2 Well, JD No. 79-8234, Nickson No. 15 Well, JD No. 79-8210.

On June 8 and June 12, 1979, the U.S. Geological Survey at Alburquerque, New Mexico submitted to the Commission notices of determination that the above-listed wells met all the requirements of stripper wells under section 108 of the Natural Gas Policy Act of 1978 (NGPA) and Commission regulations implementing that section.

Section 108(b)(1) of the NGPA provides that in order to qualify as a stripper well, a well must, among other things, produce nonassociated natural gas at a rate which does not exceed an average of 60 Mcf per production day during such period. Section 108(b)(3) defines "production day" as (1) any day during which natural gas is produced; and (2) any day during which natural gas is not produced if production during such day is prohibited by a requirement of State law or a conservation practice recognized or approved by the State agency.

The records submitted with the determinations for the above-listed wells indicate that these wells produced no natural gas during the 90-day production periods upon which the applications were based. There were no findings that these wells were shut in due to State law or practice. Accordingly, the 90-day production periods upon which these applications were based contained no production days. Since section 108(b) requires that a well produce natural gas at a rate not exceeding an average of 60 Mcf *per production day,* a well's rate of production cannot be calculated where the 90-day production period contains no production days.

On the basis of the records submitted with these determinations, the Commission hereby makes a preliminary finding, pursuant to 18 CFR § 275.202(a)(1)(i), that the determinations submitted by the U.S. Geological Survey (New Mexico) that the above-listed wells qualify as section 108 stripper wells, are not supported by substantial evidence in the records on which the determinations were made.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-23554 Filed 7-30-79; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Task Group of the Committee on Unconventional Gas Sources; Meeting

Notice is hereby given that a task group of the Committee on Unconventional Gas Sources will meet in August 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Unconventional Gas Sources will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The task group scheduling a meeting is the Geopressured Brines Task Group. The time, location and agenda of the meeting follows:

The fifth meeting of the Geopressured Brines Task Group will be held on Thursday, August 16, 1979, starting at 9:00 a.m., in the 9th Floor Conference Room of Union Oil Company of California, 900 Executive Plaza west, 4635 Southwest Freeway, Houston, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Review of the Geopressured Brines Task Group's draft report.
3. Discussion of any other matters pertinent to the overall assignment of the Geopressured Brines Task Group.

The meeting is open to the public. The Chairman of the task group is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lucio A. D'Andrea, Office of Resource Applications, 202/633-9482, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading

Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on July 24, 1979.

R. Dobie Langenkamp,

Deputy Assistant Secretary Oil, Natural Gas and Shale Resources, Resource Applications.

July 24, 1979.

[FR Doc. 79-23601 Filed 7-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. GP79-49]

U.S. Geological Survey (New Mexico), § 108 NGPA Determination, Arapahoe Drilling Co. and John E. Schalk, Five Wells; Preliminary Finding

Issued: July 23, 1979.

On June 8, 1979, the Commission received from the U.S. Geological Survey at New Mexico, notices of determination which state that five wells [1] meet all the requirements of the stripper well provisions in section 108 of the Natural Gas Policy Act of 1978 (NGPA), Pub. L. No. 95-621.

According to section 108 of the NGPA, a natural gas well may qualify for stripper well status if it produced non-associated natural gas during the preceding 90-day production period at a rate which did not exceed an average of 60 Mcf per production day. Section 271.804(c) of the interim regulations requires an application for determination for stripper well status be based on a 90-day production period ending within 120 days prior to the date on which the application is filed.

The records show that the 90-day production periods upon which the five applications are based do not end within 120 days prior to the date on which the applications were filed. Accordingly, it appears that the record does not contain substantial evidence to support the subject determinations of eligibility under section 108 of the NGPA.

In view of the above, the Commission hereby makes a preliminary finding (pursuant to § 275.202(a)(1)(i)) that the determinations submitted by the U.S. Geological Survey at Albuquerque, N.M. are not supported by substantial evidence in the record on which the determinations were made.

[1] Arapahoe Drilling Co. submitted four applications for determinations of eligibility for the following wells: Schalk 49-4 (JD79-7720), Schalk 49-3 (JD79-7721), Schalk 49-2 (JD79-7722), Schalk 49-1 (JD79-7723). John E. Schalk submitted an application for determination of eligibility for Schalk 29-4 #1 (JD79-7724).

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-23555 Filed 7-30-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1286-6; OPP-50437]

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 43143-EUP-1. Maine Cooperative Extension Service, Presque Isle, Maine 04769. This experimental use permit allows the use of 1,458 pounds of the insecticide petroleum oil on potatoes to evaluate control of various pests. A total of 30 acres is involved; the program is authorized only in the State of Maine. The experimental use permit is effective from June 29, 1979 to June 29, 1980. An exemption from the requirement for a tolerance for residues of the active ingredient in or on growing crops has been established (40 CFR 180.1001(b)(3)). (PM-12, Frank Sanders, Room: E-229, Telephone: 202/426-9425)

No. 27586-EUP-24. Expanded Southern Pine Beetle Research and Application Program, Pineville, Louisiana 71360. This experimental use permit allows the use of 120 pounds of the insecticide 0,0-dimethyl 0-(4-nitro-m-tolyl) phosphorothioate on Southern pine trees to evaluate control of Southern pine beetle. A total of 212 trees is involved; the program is authorized only in the States of Georgia, Mississippi, and North Carolina. The experimental use permit is effective from May 15, 1979 to May 15, 1980. (PM-16, William Miller, Room: E-343, Telephone: 202/426-9458)

No. 707-EUP-91. Rohm and Haas Company, Philadelphia, Pennsylvania 19105. this experimental use permit allows the use of 772 pounds of the herbicide oxyfluorfen on cotton to evaluate control of various weeds. A total of 1,025 acres is involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and in Florida and Tennessee for redistribution only. The experimental use permit is effective from July 11, 1979 to July 11, 1981. This experimental use permit is being issued with the limitation that all treated crops will be destroyed or used for research purposes only. (PM-25, Robert Taylor, Room: E-359, Telephone: 202/755-7013)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Statutory authority: Sec. 5, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: July 25, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-23611 Filed 7-30-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1286-2; OTS-51000]

Toxic Substances Control; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA, or the Agency).

ACTION: Receipt of Premanufacture Notice.

SUMMARY: Section 5(a)(1)(A) of the Toxic Substances Control Act (TSCA) requires any person intending to manufacture or import a new chemical substance for a commercial purpose in the United States to submit a premanufacture notice (PMN) to EPA at least 90 days before he commences such manufacture or import. Section 5(d)(2) of TSCA requires EPA to publish a summary of each notice in the Federal Register.

DATE: Interested parties wishing to file written comments on a specific chemical substance should submit those comments no later than 30 days before the termination date of the applicable review period.

ADDRESS: Written comments should bear the PMN number of the particular chemical substance, and should be submitted to the Document Control Officer (TS-793), Office of Toxic Substances, EPA, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Principe, Premanufacturing Review Division (TS-794), Office of Toxic Substances, EPA, Washington, D.C. 20460, telephone: 202/426-2601.

SUPPLEMENTARY INFORMATION: Under § 5 of TSCA, any person who intends to manufacture or import a new chemical substance for commercial purposes in

the United States must submit a notice to EPA at least 90 days before he begins such manufacture or import. A new chemical substance is any chemical substance that is not on the Inventory of existing chemical substances compiled by EPA under § 8(b) of TSCA. The Agency announced the availability of the TSCA Initial Inventory in the Federal Register of May 15, 1979 (44 FR 28559), and identified June 1, 1979, as the official publication date. The § 5 requirements became effective on July 1, 1979 (30 days after first publication of the Inventory).

A premanufacture notice (PMN) must include the information listed in § 5(d)(1) of TSCA. Under § 5(d)(2), EPA must publish in the Federal Register information on the identity and uses of the substance, as well as a description of test data submitted under § 5(b) of TSCA. In addition to this minimum statutory requirement, the § 5(d)(2) notice includes a description of any other test data submitted with the notice.

Publication of the § 5(d)(2) notice is subject to § 14 of TSCA concerning disclosure of confidential data. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity of the chemical substance, EPA will publish a generic name if one is provided. If no generic name is provided, EPA will develop one and publish an amended notice after providing due notice to the submitter. The EPA will immediately review confidentiality claims for chemical identity and for health and safety studies. If portions of this information are determined to be non-confidential, EPA, after complying with applicable procedures, will place the information in the public file and will publish an amended notice of the information that should have been in the original Federal Register notice.

For purposes of this notice, the submitter has claimed as confidential information: (a) chemical identity; (b) the company's name; (c) uses for the chemical; and (d) all of the test data submitted with the notice.

Once EPA receives a PMN, the Agency normally has 90 days within which to review it (§ 5(a)(1)). The § 5(d)(2) Federal Register notice indicates the termination date of the review period for each PMN. Under § 5(c) of TSCA EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that such an extension is necessary, the Agency will publish a notice in the Federal Register.

Once the review period expires, the submitter may begin manufacture of the substance unless EPA restrictions are imposed. When manufacture begins, the submitter must report to EPA and the substance will be added to the Inventory. After the substance is added to the Inventory, any person may manufacture it without providing EPA notice under § (a)(1)(A) of TSCA.

EPA has proposed premanufacture notification requirements and Review Procedures (44 FR 2242, January 10, 1979). These requirements are not yet in effect. Interested parties should consult the Agency's interim policy for premanufacture notices for guidance concerning requirements prior to the effective date of premanufacture rules and forms (see the Federal Register of May 15, 1979, 44 FR 28564), specifically the subheading entitled "Notice in the Federal Register" on p. 28567 of that issue.

(Section 5 of the Toxic Substances Control Act (90 Stat. 2012; 15 U.S.C. 2604).)

John P. DeKany,

Deputy Assistant Administrator for Chemical Control.

PMN No. 5AHQ-0779-0004

Close of Review Period:

October 17, 1979.

New Chemical Substance:

Amine salts of dicarboxylic acids. This a generic name. The company claims the specific chemical identity to be confidential.

Uses:

The company claims the uses for the amine salts of dicarboxylic acids to be confidential.

Data Submitted:

The company claims as confidential the data describing the physical and chemical properties of the new chemical substance. No other health and safety data were submitted.

[FR Doc. 79-23610 Filed 7-30-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1286-3]

Water Quality Criteria Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Water Quality Criteria Subcommittee of the Science Advisory Board will be held on August 27 and 28, 1979, beginning at 9:00 a.m., in Conference Room 2117, Waterside Mall, 401 M Street, SW., Washington, D.C.

This is the second meeting of the Water Quality Criteria Subcommittee. The Agenda includes consideration of the Subcommittee's report on the methodologies used in the development of water quality criteria to protect aquatic life and human health for the 27 specified pollutants listed in the Federal Register, Part V, pages 15926-15981, March 15, 1979, and on selected criteria documents.

The meeting is open to the Public. Because of limited seating capacity of the meeting room, all members of the public desiring to attend must preregister no later than August 20, 1979, and receive a confirmed reservation from Dr. J Frances Allen, Staff Officer, Water Quality Criteria Subcommittee, or Ms. Anita Najera, (202) 472-94444.

Dated: July 26, 1979.

Richard M. Dowd,

Staff Director, Science Advisory Board.

[FR Doc. 79-23609 Filed 7-30-79; 8:45 am]

BILLING CODE 6560-01-M

[FIFRA Docket No. 485; FRL 1287-3]

Intent To Suspend Registrations of Dibromochloropropane (DBCP); Hearing and Prehearing Conference

Notice is hereby given pursuant to § 164.121(d) of the rules of practice (40 CFR 164.121(d)) issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*), that a hearing involving the suspension of all uses of all registrations of pesticide products containing dibromochloropropane (DBCP), will begin on August 2, 1979, at 9:30 a.m., in Room 2409 Waterside Mall, 401 M Street, S.W., Washington, D.C. Immediately after convening, the hearing will be temporarily recessed to permit the holding of a prehearing conference as provided in the Notice of Intent To Suspend dated July 18, 1979 (44 FR 43335 (July 24, 1979)). The purpose of the prehearing conference will be to consider the matters set out in 40 CFR 164.50.

For information concerning the issues involved and other details of this proceeding, interested persons are referred to the docket of this proceeding on file with the Hearing Clerk, Environmental Protection Agency, (Mail Code A-110), Room 3708 Waterside

Mall, 401 M Street, S.W., Washington, D.C. 20460.

Gerald Harwood,

Administrative Law Judge.

July 27, 1979.

[FR Doc. 79-23758 Filed 7-30-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

ENFIA Quarterly Meeting Scheduled

In *Memorandum Opinion and Order,* FCC 79-222, released April 16, 1979 the Commission accepted, to the extent indicated therein, the Interim Settlement Agreement filed by certain telecommunications common carriers for the provision of ENFIA (Exchange Network Facilities for Interstate Access). Paragraph 17 of that agreement provided for quarterly meetings under the aegis of the Commission, to monitor and oversee the implementation of the Agreement.

The first of these quarterly meetings will be held on August 7, 1979, at 9:30 am, at 2000 L Street, N.W., 7th Floor, Washington, D.C. This meeting is open to the public. Among the subjects requested to be discussed by the parties are:

(1) A review of implementation and administrative matters.

(2) The format and timing of OCC revenue reporting to the FCC (see BSOC 8-2.3.6[a]).

(3) The format and timing of OCC minutes of ENFIA use reported to the FCC (see BSOC 8.4[b]2).

(4) ENFIA tariff changes.

A. To accommodate special conditioning for data usage VGCOCF.

B. To permit consistency with BSOC 6.

(5) Status report by the FCC Staff on the FX/CCSA question.

(6) The format and timing of Bell's report on annual SPF adjustments.

(7) Status of settlements with Independents.

(8) Facilities forecasts by OCCs.

(9) NNX access codes.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79-23582 Filed 7-30-79; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Adams Investment Co.; Acquisition of Bank

Adams Investment Company, Fergus Falls, Minnesota, has applied for the Board's approval under Section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire an additional 5.7 per cent of the voting shares of The First National Bank of Fergus Falls, Fergus, Minnesota. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 24, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 25, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23523 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

Alexandria Securities and Investment Co.; Formation of Bank Holding Company

Alexandria Securities and Investment Company, Alexandria, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent of the voting shares of Community State Bank, Alexandria, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 24, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 25, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23525 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced de novo), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consumation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, idenfitying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggreived by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than August 24, 1979.

A. *Federal Reserve Bank of New York,* 33 Liberty Street, New York, New York 10045:

Manufacturers Hanover Corporation, New York, New York (mortgage banking and insurance activities; Arizona): to engage in arranging, making or acquiring for its own account or for the account of others, loans and other extensions of credit such as would be made or acquired by a mortgage company; servicing any such loans and other

extensions of credit for any person; and acting as agent, through its subsidiary, CMC Insurance Agency, Inc., for the sale of credit life and credit accident and health insurance relating to such loans and other extensions of credit. These activities would be conducted from an office in Phoenix, Arizona, serving Maricopa County, Arizona.

B. *Federal Reserve Bank of Richmond,* 701 East Byrd Street, Richmond, Virginia 23261:

Virginia National Bankshares, Inc., Norfolk, Virginia (financing and insurance activities; Virginia): to engage, through its subsidiary, Atlantic Equity Corporation, in operating a finance company including making direct consumer installment loans, purchasing consumer installment sales finance contracts, extending direct loans to dealers for the financing of inventory (floor planning) and working capital purposes; making, acquiring, and servicing, for its own account or for the account of others, loans secured principally by second mortgages on real property and acting as agent for the sale of credit life and credit accident and health insurance directly related to its extensions of credit. These activities would be conducted from offices in Richmond, Portsmouth, and Suffolk area.

Addendum to notice dated July 9, 1979 (44 FR 40140), of Virginia National Bankshares, Inc., Norfolk, Virginia, to expand the activities of its subsidiary, VNB Insurance Agency, Inc., Virginia National Bankshares, Inc., also proposes to engage, through its subsidiary, Atlantic Equity Corporation, in acting as agent for the sale of credit-related property and casualty insurance, directly related to its extensions of credit.

C. *Federal Reserve Bank of Boston,* 30 Pearl Street, Boston, Massachusetts 02106:

1. First National Boston Corporation, Boston, Massachusetts (factoring, commercial financing, and personal property leasing activities; Idaho, Montana, Oregon, Washington, and Wyoming) through a subsidiary of First National Boston Corporation's subsidiary, FSC Corp., FNB Financial Company, to engage *de novo* in the following activities: factoring, commercial financing, and personal property leasing. These activities would be performed by FNB Financial Comapny at an office located at 111 S.W. Columbia Street, Portland, Oregon, serving Idaho, Montana, Oregon, Washington, and Wyoming.

2. First National Boston Corporation, Boston, Massachusetts (trust related services; Arizona): to engage, through its subsidiary, Old Company Trust Company of Arizona, in providing corporate, pension and personal trust related services to corporations, partnerships and individuals. These activities would be conducted from offices in Phoenix and Tucson, Arizona, serving the State of Arizona.

D. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, August 24, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board

[FR Doc. 79-23527 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and except as noted, received by the appropriate Federal Reserve Bank not later than August 20, 1979.

A. *Federal Reserve Bank of Chicago,* 230 South LaSalle Street, Chicago, Illinois 60690:

Walter E. Heller International Corporation, Chicago, Illinois (commercial finance; Minnesota, Iowa, North Dakota and South Dakota): to engage, through its subsidiary, Walter E. Heller & Company, in secured lending, and the servicing of such financial arrangements. These activities would be conducted from an office in Minneapolis, Minnesota, serving Minnesota, Iowa, North Dakota, and South Dakota.

B. *Federal Reserve Bank of Richmond,* 701 East Byrd Street, Richmond, Virginia 23261:

Virginia National Bankshares, Inc., Norfolk, Virginia (mortgage banking and insurance activities; Virginia): to engage, through its subsidiary, VNB Real Estate Loan Corporation, in mortgage banking, including originating, and servicing for its own account or for the account of others, conventional insured and/or guaranteed residential, apartment, commercial and industrial loans; and to act as agent for the sale of credit life insurance and credit accident and health insurance which are directly related to extensions of credit by VNB Real Estate Loan Corporation. Such activities will be conducted at an office in Raleigh, North Carolina (with the administrative office in Richmond, Virginia), serving the Raleigh area. Comments for this application must be received no later than August 17, 1979.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, July 20, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23528 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether

consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than August 17, 1979.

A. *Federal Reserve Bank of San Francisco,* 400 Sansome Street, San Francisco, California 94120:

U.S. Bancorp, Portland, Oregon (financing activities: Arizona, Arkansas, Colorado, Kansas, Louisiana, Mississippi, Missouri, Nebraska, Nevada, New Mexico, Oklahoma, Texas and Utah): to engage, through its subsidiary, U.S. Bancorp Financial, Inc. in making, acquiring and servicing of loans and other extensions of credit, either secured or unsecured, for its own account or the account of others, including, but not limited to commercial, rediscount, installment sales contracts and other forms of receivables, and leasing of personal property and equipment. These activities would be conducted from an office in Dallas, Texas, serving the thirteen States listed above.

B. *Federal Reserve Bank of Cleveland,* 1455 East Sixth Street, Cleveland, Ohio 44101:

Pittsburgh National Corporation, Pittsburgh, Pennsylvania (mortgage banking activities; California): to engage, through its subsidiary The Kissel Company, in making, acquiring, and servicing, for its own account and the accounts of others, loans and other extensions of credit such as would be made by a mortgage company. These activities would be conducted from an office in Escondido, California, serving San Diego County, California.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, July 20, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23529 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies: Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)((8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than August 21, 1979.

A. *Federal Reserve Bank of San Francisco,* 400 Sansome Street, San Francisco, California 94120:

Security Pacific Corporation, Los Angeles, California (mortgage closing document preparation activities; Georgia): to engage, through its subsidiary, Document Preparation, Inc., in preparing for use by others, including Security Pacific Mortgage Corporation closing documents to be used in connection with the closing of mortgage loans made by Security Pacific Mortgage Corporation and other mortgage lenders. These activities would be conducted from an office in Atlanta, Georgia, serving the State of Georgia.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, July 24, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23530 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

C.S.B. Financial, Inc.; Formation of Bank Holding Company

C.S.B. Financial, Inc., Chetek, Wisconsin, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 82.62 per cent of the voting shares of Chetek State Bank, Chetek, Wisconsin. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than August 23, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 24, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23534 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

Dakota Western Bankshares, Inc.; Formation of Bank Holding Company

Dakota Western Bankshares, Inc., Bowman, North Dakota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent of more of the voting shares of Dakota Western Bank, Bowman, North Dakota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Dakota Western Bankshares, Inc., Bowman, North Dakota, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Dakota Western Agricultural Credit Company, Inc., Bowman, North Dakota.

Applicant states that the proposed subsidiary would engage in the activity of an agricultural credit company. These activities would be performed from offices of Applicant's subsidiary in Bowman, North Dakota, and the geographic area to be served is the Bowman area. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than August 20, 1979.

Board of Governors of the Federal Reserve System, July 20, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23535 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

First Bank Corp.; Acquisition of Bank

First Bank Corporation, Midland, Michigan, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 80 per cent or more of the voting shares of Shepherd State Bank, Shepherd, Michigan. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 23, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 23, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23537 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

First Banc Group of Ohio, Inc.; Acquisition of Bank

First Banc Group of Ohio, Inc., Columbus, Ohio, has applied for the Board's approval under Section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3) to acquire 100 per cent of the voting shares (less directors' qualifying shares) of Hardin National Bank, Kenton, Ohio. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than August 20, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 20, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23536 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

Leon County Bancshares, Inc.; Formation of Bank Holding Company

Leon County Bancshares, Inc., Buffalo, Texas, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Citizens State Bank, Buffalo, Texas. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 24, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 25, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23538 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies: Liberty National Corp.; Proposed De Novo Nonbank Activities; Correction

This notice corrects a previous Federal Register document (FR Doc. 79-22248) appearing at page 42338 of the issue for Thursday, July 19, 1979. The date in the second line of the right column should read "July 10, 1979."

Board of Governors of the Federal Reserve System, July 24, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23526 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

Lombard Bancorp, Inc.; Formation of Bank Holding Company

Lombard Bancorp, Inc., Lombard, Illinois, has applied for the Board's approval under section 3(a)(1) of the

Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 90 percent or more of the voting shares of State Bank of Lombard, Lombard, Illinois. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 15, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 17, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23539 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

Maddock Bank Holding Co.; Formation of Bank Holding Company

Maddock Bank Holding Company, Maddock, North Dakota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become a bank holding company by acquiring 81.3 per cent of the voting shares of Farmers State Bank, Maddock, North Dakota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 23, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 23, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23540 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

National Detroit Corp.; Acquisition of Bank

National Detroit Corporation, Detroit, Michigan, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 per cent or more of the voting shares of Farmers and Merchants National Bank in Benton Harbor, Benton Harbor, Michigan. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the Offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 24, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 25, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23524 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

Pierce City Bancshares, Inc.; Formation of Bank Holding Company

Pierce City Bancshares, Inc., Pierce City, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of First National Bank of Pierce City, Pierce City, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 23, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 23, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23541 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

Thayer Agency, Inc.; Formation of Bank Holding Company

Thayer Agency, Inc., Hebron, Nebraska, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent less directors' qualifying shares of the voting shares of Thayer County Bank, Hebron, Nebraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1312(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 23, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 23, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23542 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

Valley Mills Financial Corp., Formation of Bank Holding Company

Valley Mills Financial Corporation, Valley Mills, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares (less directors' qualifying shares) of First National Bank in Valley Mills, Valley Mills, Texas. The factors that are considered in acting on the application

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 20, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 20, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23543 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

United Virginia Bankshares Inc.; Acquisition of Bank

United Virginia Bankshares Incorporated, Richmond, Virginia, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares of United Virginia Bank/Commonwealth, Richmond, Virginia. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond. Any person wishing to comment on the application should submit views in writing to the Reserve bank to be received not later than August 10, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 20, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23544 Filed 7-30-79 8:45 am]

BILLING CODE 6210-01-M

WRB Bancshares, Inc.; Formation of Bank Holding Company

WRB Bancshares, Inc., Oklahoma City, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares (less directors' qualifying shares) of Will Rogers Bank and Trust Company, Oklahoma City, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than August 23, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 25, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-23545 Filed 7-30-79; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on July 24, 1979. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before August 20, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Civil Aeronautics Board

The CAB requests clearance of specific notice, reporting and recordkeeping requirements contained in Part 212, sections 7, 9, 11, 13, 22(b), 24, 25, 45, 46, 47, and 60, of the Board's Economic Regulations, "Charter Trips by Foreign Carriers". Adherence to these requirements is mandatory under the Federal Aviation Act of 1958, as amended. CAB estimates that there will be 109 respondents with an average reporting burden of 166 hours per respondent to comply with all sections.

The CAB requests clearance of the specific notice, reporting and recordkeeping requirements contained in Part 214, sections 3, 6, 8, 9, 12(b), 17, 18, 35, 36, 37, and 50, of the Board's Economic Regulations, "Terms, Conditions, and Limitations of Foreign Air Carrier Permits Authorizing Charter Transportation Only". Adherence of these requirements is mandatory under the Federal Aviation Act of 1958, as amended. CAB estimates that there will be 48 respondents with an average reporting burden of 96 hours per respondent to comply with all sections.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 79-23598 Filed 7-30-79; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 94; Case No. 78-92-EL-AIR]

Dayton Power & Light Co., the Public Utility Commission of Ohio; Proposed Intervention in Electric Rate Increase Proceeding

The General Services Administration seeks to intervene in a proceeding before the Public Utility Commission of Ohio concerning the application of the Dayton Power and Light Company for an increase in electric rates. GSA represents the interest of the executive agencies of the U.S. Government as users of utility services.

Persons desiring to make inquiries to GSA concerning this case should submit them in writing to Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th & F Streets NW., Washington, D.C. (mailing address: General Services Administration (LT),

Washington, D.C. 20405), telephone 202-566-0750, on or before August 30, 1979, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Sec. 201(a)(4), Federal Property and Administrative Services Act (40 U.S.C. 481(a)(4)).)

Dated: July 19, 1979.

Walter V. Kallaur,

Acting Deputy Administrator of General Services.

[FR Doc. 79-23404 Filed 7-30-79; 8:45 am]

BILLING CODE 6820-AM-M

[GSA Bulletin FPR 24 Federal Procurement Supplement 1]

Interagency Procurement Policy Committee

1. *Purpose.* This supplement replaces attachment A with a list of current members and their alternates to the Interagency Procurement Policy Committee (IPPC).

2. *Expiration date.* This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. *Filing instructions.* Remove attachment A (pages 1 through 10) and insert updated attachment A (pages 1 through 10).

Dated: July 12, 1979.

Dale R. Babione,

Assistant Administrator for Acquisition Policy.

[GSA Bulletin FPR 24 Attachment A]

Agencies and Representatives Comprising the Interagency Procurement Policy Committee

July 12, 1979.

Member and Alternate; Address and Telephone No.

General Services Administration:

Philip G. Read, Chairman, Director, Federal Procurement, Regulations Directorate, Office of Acquisition Policy, 557-8947, Room 1107, Crystal Square 5, Washington, DC 20406.

Agency for International Development:

Joseph C. Watkins, Chief, Support Division, Office of Contract Management, 235-9125, Room 701, Pomponio Plaza Building, Washington, DC 20523.

Department of Agriculture:

Dean T. Smith, Chief Procurement Division, Office of Operations & Finance, 447-3037, Room 1575, South Building, Washington, DC 20250.

Lacy Arnold (Alternate), Supervisory Procurement Analyst, Policy Branch, Procurement Division, Office of Operations & Finance, 447-7527, Room 1575, South Building, Washington, DC 20250.

Central Intelligence Agency:

Aubrey T. Chason, Chief, Procurement, Management Staff, 281-8167, Room 2G31, Page Building, Washington, DC 20505. (No Alternate.)

Department of Commerce:

David Larkin, Chief, Procurement, Policy Division, 377-3891, Room 6411, 14th & Constitution Ave. NW, Washington, DC 20230.

Dale Helms (Alternate), Procurement Analyst, 377-3891, Room 6411, 14th & Constitution Ave. NW, Washington, DC 20230.

Department of Defense:

Thomas Cassidy, Acting Chairman, ASPR Comm. OUSD (R&E) (NARS), 697-6710, Room 3D 1080, The Pentagon, Washington, DC 20301.

Department of Energy:

Berton J. Roth, Director, Office of Policy, Procurement & Contracts, Management Directorate, 376-9227, Room 302, 400 1st Street NW, Washington, DC 20585.

Robert VanNess (Alternate), Director, Policy & Procedures Division, Office of Policy Procurement & Contracts, Management Directorate, 376-1730, Room 312, 400 1st Street NW, Washington, DC 20585.

Environmental Protection Agency:

William E. Mathis, Director, Procurement & Contracts Management Division, 755-0822, Room 2003, Waterside Mall (PM 214), Washington, DC 20460.

Robert L. Wright (Alternate), Deputy Director, Procurement & Contracts, Management Division, 755-0822, Room 2003, Waterside Mall (PM 214), Washington, DC 20460.

Federal Acquisition Institute:

William N. Hunter, Director, 274-8286, Room 7W06, 5001 Eisenhower Avenue, Alexandria, VA 22333.

Federal Communications Commission:

Kenneth A. Gordon, Chief, Procurement Division, 632-6407, Room A-104, 1229 20th Street NW, Washington, DC 20554.

Margie Sharp (Alternate), Contracting Officer, 632-6407, Room A-104, 1229 20th Street NW, Washington, DC 20554.

Federal Emergency Management Agency:

Duane Murray, Acting Director, Division of Acquisition Management, 235-2460, Room 520-E, 1615 North Lynn Street, Rosslyn, VA 22209.

General Accounting Office:

Seymore Efros, Associate General Counsel, 275-6071, Room 7041, 441 G Street NW, Washington, DC 20548.

John G. Brosnan (Alternate), Senior Attorney, 275-5478, Room 7075, 441 G Street NW, Washington, DC 20548.

Department of Health, Education, and Welfare:

Murray N. Weinstein, Director, Division of Procurement Policy & Regulations Development, Office of Grants & Procurement, 245-8791, Room 539H, Hubert H. Humphrey Bldg., Washington, D.C. 20201.

Frederick C. Lewis (Alternate), Chief, Procurement Policy Branch, Division of Procurement Policy & Regulations Development, Office of Grants & Procurement, 245-6347, Room 539H, South Portal Building, Washington, D.C. 20201.

Department of Housing and Urban Development:

Thomas Whittletin, Director, Office of Procurement and Contracts, 724-0040, 451 7th Street SW, Room B-133 (711 Bldg.), Washington, D.C. 20410.

Craig Durkin (Alternate) Acting Director, Policy & Evaluation Division, 724-0038, 451 7th Street SW, Room B-133 (711 Bldg.), Washington, D.C. 20410.

Department of the Interior:

Robert Saldivar, Chief, Procurement and Grants Division, Office of Administrative and Management Policy, 343-5914, Room 5524, 18th & C Streets NW., Washington, D.C. 20240.

William S. Opdyke (Alternate), Procurement Analyst, Procurement and Grants Division, Office of Administrative & Management Policy, 343-5914, Room 5524, 18th & C Streets NW., Washington, D.C. 20240.

International Communication Agency:

James T. McIlwee, Chief, Contract and Procurement Division, 653-5570, Room 613, 1717 H Street NW., Washington, D.C. 20547.

Daniel Drullard (Alternate), Chief, Policy & Procedures Branch, Contract & Procurement Division, 653-5570, Room 613, 1717 H Street NW., Washington, D.C. 20547.

Department of Justice:

William H. O'Donoghue, Assistant Director, Procurement Mgt. Group Administrative Programs, Management Staff, Office of Management & Finance, 633-2075, Room 6320, 10th & Constitution Ave. NW., Washington, D.C. 20530.

Paul Flester (Alternate), Chief, Procurement Policy Section, Procurement Management Group, Office of Management & Finance, 633-1910, Room 6316, 10th & Constitution Ave. NW., Washington, D.C. 20530.

Department of Justice, (Law Enforcement Assistance Administration):

Hana Taffet, Esq., Policy Development & Training Division, Office of Comptroller (LEAA), 724-5863, Room 900, 633 Indiana Ave. NW., Washington, D.C. 20531.

Department of Labor:

Theodore Goldberg, Assistant Director, Grants & Procurement Policy, 523-9174, Room S 1325, 200 Constitution Ave. NW., Washington, D.C. 20210.

Richard Strom (Alternate), Senior Procurement Analyst, 523-9714, Room S1325, 200 Constitution Ave. NW., Washington, D.C. 20210.

Library of Congress:

Floyd D. Hedrick, Chief, Procurement and Supply Division, Office of the Associate Librarian for Management, 301-287-8605, 1701 Brightseat Road, Landover, MD 20785.

John G. Kormos (Alternate), Contracting Officer, 301-287-8703, 1701 Brightseat Road, Landover, MD. 20785.

National Aeronautics and Space Administration:

Admiral L. E. Hopkins, Deputy Director of Procurement, 755-2252, Room 101, 600 Independence Ave. SW., Washington, D.C. 20546.

George W. Coleman (Alternate), Director, Procurement Policy, Division, 755-8529, Room 100, 600 Independence Ave. SW., Washington, D.C. 20546.

National Science Foundation:

William B. Cole, Jr., Head, Policy Office, Division of Grants & Contracts, 632-4148, Room 201, 1800 G Street NW., Washington, D.C. 20550.

Donald W. Frenzen (Alternate), Associate General Counsel, 632-4397, Room 501, 1800 G Street NW., Washington, D.C. 20550.

Nuclear Regulatory Commission:

Edward Halman, Director, Division of Contracts, 427-4460, Room 200, Willste Building, Washington, D.C. 20555.

Harris Coleman (Alternate), Chief, Contract Policy Staff, Division of Contracts, 427-4383, Room 314 Willste Building, Washington, D.C. 20555.

Office of Management and Budget:

LeRoy J. Haugh, Associate Administrator for Regulations and Procedures, Office of Federal Procurement Policy, 395-6166, Room 9013, New Executive Office Bldg., Washington, D.C. 20503.

Donald J. Vogler (Alternate), Deputy Assistent Administrator for Regulations, 395-3300, Room 9013, New Executive Office Bldg., Washington, D.C. 20503.

Panama Canal Company—Canal Zone:

Thomas M. Constant, Secretary, Assistant to the Governor, 724-0104, Room 312, Pennsylvania Building, Washington, D.C. 20004.

Raymond P. Laberty, Acting Director, Supply & Community Service Bureau, 724-0104, Room 312, Pennsylvania Building, Washington, D.C. 20004.

Pension Benefit Guaranty Corporation:

B. Robert Perlstein, Chief, Procurement Branch, 254-4767, Room 4320, 2020 K Street NW., Washington, D.C. 20006.

Charles W. Snearer (Alternate), Administrative Officer, 254-4776, Room 4320, 2020 K Street NW., Washington, D.C. 20006.

United States Postal Service:

Euguene A. Keller, Assistant for Procurement, Policy—Procurement Supply Department, 245-4818, Room 1512, 475 L'Enfant Plaza West, Washington, D.C. 20260.

Ronald E. Barnes (Alternate), Procurement & Supply Programs Officer, 245-4818, Room 1502, 475 L'Enfant Plaza West, Washington, DC 20260.

Small Business Administration:

R. F. McDermott, Director, Office of Procurement and Technical Assistance, 653-6588, Room 622, Imperial Buiding, 1441 L Street NW., Washington, D.C. 20416.

Ralph F. Turner (Alternate), SBA Liaison Representative, 695-2435, OUSDRE (M&RS) Room 1E526, The Pentagon, Washington, D.C. 20301.

Smithsonian Institution:

Harry P. Barton, Director, Office of Supply Services, 381-5924, Room 3120, North Building, 955 L'Enfant Plaza SW., Washington, D.C. 20024.

Robert P. Perkins (Alternate), Deputy Director, Office of Supply Services 381-5924, Room 3120, North Building, 955 L'Enfant Plaza SW., Washington, D.C. 20024.

Department of State:

Harry M. Hite, Special Assistant to the Chief of Supply & Transportation Division, 235-9529, Room 532, State Annex 6, Washington, D.C. 20520.

Department of Transportation:

Barnett M. Anceleitz, Director of Installations & Logistics, 426-4237, Room 9100, Nassif Building, 400 7th Street SW., Washington, D.C. 20590.

Roger Martino (Alternate), Chief, Procurement Management Division, 426-4237, Room 9100 Nassif Building, 400 7th Street SW., Washington, D.C. 20590.

Department of the Treasury:

Thomas P. O'Malley, Assistant Director, Office of Administrative Programs, Procurement and Personal Property Management, 376-0650, Room 900 1331 G Street SW., Washington, D.C. 20220.

Charles J. Schaefer (Alternate), Procurement Analyst, 376-0650, Room 900, 1331 G Street NW., Washington, D.C. 20220.

U.S. Arms Control and Disarmament Agency:

Evalyn W. Dexter, Contracting Officer, 235-8248, 8/SA-6, New State Department Bldg., Washington, D.C. 20451.

Walter L. Baumann (Alternate), Assistant General Counsel, 632-3530, Room 5534, New State Department Bldg., Washington, D.C. 20451.

Veterans Administration:

A. G. Vetter, Procurement Policy Specialist, 389-3882, Room 775-I, 810 Vermont Ave., NW., Washington, D.C. 20420.

Joseph M. Cumiskey (Alternate), Chief, Procurement Division, 389-3054, Room 765, 810 Vermont Ave., NW., Washington, D.C. 20420.

[FR Doc. 79-23487 Filed 7-30-79; 8:45 am]

BILLING CODE 6820-61-M

[Intervention Notice 93; Docket No. 1330]

Public Service Co. of Colorado, Public Utilities Commission of the State of Colorado; Proposed Intervention in Gas, Electric, and Steam Revenue Proceeding

The General Services Administration seeks to intervene in a proceeding before the Public Utilities Commission of the State of Colorado concerning the application of the public Service Company of Colorado for increases in its gas, electric and steam revenues. GSA represents the interest of the executive agencies of the U.S. Government as users of gas, electric and steam services.

Persons desiring to make inquiries to GSA concerning this case should submit them in writing to Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th & F Streets, NW., Washington, D.C. (mailing address: General Services Administration (LT), Washington, D.C. 20405), telephone 202-566-0750, on or before August 30, 1979, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Sec. 201(a)(4), Federal Property and Administrative Services Act, (40 U.S.C. 481(a)(4))

Dated: July 19, 1979.

Walter V. Kallaur,

Acting Deputy Administrator of General Services.

[FR Doc. 79-23479 Filed 7-30-79; 8:45 am]

BILLING CODE 6820-AM-M

[Intervention Notice 96; Case No. ER-479]

Public Service Co. of New Mexico, the Federal Regulatory Commission; Proposed Intervention in Electric Rate Increase Proceeding

The General Services Administration seeks to intervene in a proceeding before the Federal Energy Regulatory Commission concerning the application of the Public Service Company of New Mexico for an increase in electric rates. GSA represents the interests of the executive agencies of the U.S. Government as users of utility services.

Persons desiring to make inquiries to GSA concerning this case should submit them in writing to Spence W. Perry, Assistant General Counsel, regulatory Law Division, General Services Administration, 18th & F Streets, NW., Washington, DC (mailing address: General Services Administration (LT), Washington, DC 20405), telephone 202-566-0750, on or before August 30, 1979, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Sec. 201(a)(4)), Federal Property and Administrative Services Act, (40 U.S.C. 481(a)(4)))

Dated: July 20, 1979

Walter V. Kallaur,

Acting Deputy Administrator of General Services.

[FR Doc. 79-23486 Filed 7-30-79; 8:45 am]

BILLING CODE 6820-AM-M

[Intervention Notice 95; Case No. 722]

Washington Gas Light Co., District of Columbia Public Service Commission; Proposed Intervention in Utility Rate Increase Proceeding

The General Services Administration seeks to intervene in a proceeding before the District of Columbia Public Service Commission concerning the application of the Washington Gas Light Company for an increase in its interim rates. GSA represents the interest of the executive agencies of the U.S. Government as users of utility services.

Persons desiring to make inquiries to GSA concerning this case should submit them in writing to Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th & F Streets, NW., Washington, DC (mailing address: General Services Administration (LT), Washington, DC 20405), telephone 202-566-0750, on or before August 30, 1979, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Sec. 201(a)(4), Federal Property and Administative Services Act, (40 U.S.C. 481(a)(4)))

Dated: July 20, 1979.

Walter V. Kallaur,

Acting Deputy Administrator of General Services.

[FR Doc. 79-23485 Filed 7-30-79; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 75N-0232]

Bulk Flavor Labeling; Extension of Effective Date for Compliance

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice extends until July 1, 1981, the effective date of the requirement for ingredient declaration in § 101.22(g)(2) (21 CFR 101.22(g)(2)) for those flavor ingredients that are listed as generally recognized as safe (GRAS) in a reliable industry association list and included by the Food and Drug Administration (FDA) in its review of GRAS food ingredients. The extension is needed to allow FDA more time to review the safety of flavor ingredients.

DATE: Compliance by July 1, 1981.

FOR FURTHER INFORMATION CONTACT: Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: Section 101.22(g)(2) (21 CFR 101.22(g)(2)) requires that a mixture of flavors shipped to a food manufacturer or processor (but not to a consumer) for use in the manufacture of a fabricated food must be labeled so as to declare the identity of each ingredient or bear the statement that "all flavor ingredients contained in [the] product are approved for use in a regulation of the Food and Drug Administration." Non-flavor ingredients and flavors not approved by a regulation must be listed separately.

The history of § 101.22(g)(2) (formerly 32 CFR 1.12(g)(2) prior to recodification in the Federal Register of March 15, 1977 (42 FR 14302)) was summarized in a notice published in the Federal Register of February 3, 1976 (41 FR 4954). The effective date of this labeling regulation was extended to July 1, 1979 for all flavors that are listed as being GRAS in a reliable industry association list. The extension allowed FDA time to review the safety of the flavor ingredients. FDA has recognized as reliable industry GRAS lists the Flavor Extract Manufactururs' Association (FEMA) GRAS Lists Nos. 3 through 11, which have been published in *Food Technology* and were acknowledged by FDA in the Federal Register on February 3, 1976 (41 FR 4954), October 18, 1977 (42 FR 55643), and May 26, 1978 (43 FR 22784).

In the February 3, 1976 notice, FDA acknowledged that its safety evaluation of flavor ingredients could not be completed by July 1, 1979. The agency advised that further extension of the deadline for compliance with § 101.22(g)(2) and of reliance on reliable published industry association lists would be announced when appropriate. FDA now estimates that this safety review will require at least another 2 years to complete.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1); *It is ordered,* That the effective date of July 1, 1979 for compliance with paragraph (g)(2) of § 101.22 *Foods; labeling of spices, flavorings, colorings and chemical preservatives,* as published in the Federal Register of February 3, 1976 (41 FR 4954), be extended to July 1, 1981: *Provided,* That the label of the product bears a statement certifying that the ingredients are listed as generally recognized as safe in a reliable published industry association list, and FDA has included the ingredients in its safety review of flavor substances.

A list of the flavor substances included in the FDA safety review, and therefore covered by this extension, is available for review at the office of the Hearing Clerk, Rm. 4-65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. The list may be reviewed between 9 a.m. and 4 p.m., Monday through Friday. The list includes the name of the substance and, where appropriate, one or more of the following: the FEMA SLR monograph number, the FEMA GRAS list number, and/or a citation of a regulation in Title 21 of the Code of Federal Regulations.

Dated: July 23, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-23500 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-03-M

Cadmium, Lead, and Other Metals; Memorandum of Understanding With the U.S. Environmental Protection Agency, the U.S. Department of Agriculture, and the Food and Drug Administration

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding (MOU) with the U.S. Environmental Protection Agency and the U.S Department of Agriculture. The purpose of the memorandum is to provide for a study of background concentrations of cadmium, lead, and other selected metals in soils and crops in major production areas.

DATE: The agreement became effective February 1, 1979.

FOR FURTHER INFORMATION CONTACT: Gary Dykstra, Regulatory Operations Section (HFC-22), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3470.

SUPPLEMENTARY INFORMATION: Pursuant to the notice published in the Federal Register of October 3, 1974 (39 FR 35697) stating that future memoranda of understanding and agreements between FDA and others would be published in the Federal Register, the Commissioner of Food and Drugs is issuing the following memorandum of understanding:

Memorandum of Understanding Among the Soil Conservation Service and the Science and Education Administration (Agricultural Research) of the U.S. Department of Agriculture, the U.S. Environmental Protection Agency, and the Food and Drug Administration, U.S. Department of Health, Education, and Welfare

I. Purpose

The purpose of this cooperative agreement is to provide for a study of background concentrations of cadmium, lead, and other selected metals in soils and crops in major production areas. This is an agreement among the United States Environmental Protection Agency (EPA), the Soil Conservation Service (SCS), and the Science and Education Administration-Agricultural Research (SEA-AR) of the United States Department of Agriculture (USDA), and the United States Food and Drug Administration (FDA).

II. Background

This study is needed for the following reasons: 1. The FDA requires detailed information on the normal background levels of these elements, some of which are toxic, in crops in the human and animal food chain as a basis for developing limitations and tolerances, and for assessing the nutritional and toxicological significance of human and animal intake of these elements.

2. The EPA has the mission of regulating the use of wastes, including sewage sludge, containing heavy metals and other elements on land and crops. Detailed knowledge of background levels in soils and the crops are needed as a basis for these regulations.

3. The USDA requires information on the distribution of elements and metals in soils of different types in the United States and the likelihood of uptake of such elements into crops grown on these soils. This is needed to provide advice and information to farmers on agricultural practices.

III. Substance of Agreement

A. *Scope of Work.* In the cooperative project, the USDA, SCS will collect over a 4-year period approximately 6,000 samples of crops in major crop producing regions and 18,000 associated soil samples. Specially trained soil scientists will collect the samples. The crop samples will be collected from major production areas and at the harvest stage of the crop, together with the associated soil pedons, in accordance with the standards of the Soil Manual and National Soil Handbook. Crop samples will be shipped to the Cin-DO laboratory of FDA in Cincinnati, Ohio. FDA will process and analyze the samples, avoiding contamination, for cadmium, lead and other selected elements. Analyses will be performed by inductively coupled plasma optical emission spectroscopy (ICP-OES), anodic stripping voltametry (ASV) and atomic absorption (AA), as needed. Minimum reporting levels of Cd, Pb, Se, and Zn in the crop samples will be 0.005, 0.01, 0.01, and 0.1 microgram per gram of dry weight respectively.

All data obtained by FDA, including solid contents of each sample, will be provided to USDA in mutually agreed upon form, suitable for computer processing (which may be on magnetic tapes).

Soil samples will be shipped to the SCS National Soil Survey Laboratory in Lincoln, Nebraska, for analysis. Concentrations of cadmium, lead, and other elements will be determined by anodic stripping voltametry, atomic absorption and other applicable methods. Minimum reporting levels for cadmium and lead in soil will be 0.05 and 0.10 micrograms per gram. Selenium will be determined on selected soil samples at a minium reporting level of 0.10 micrograms per gram.

Soil and plant data will be entered into a computer data base by USDA and statistically analyzed to determine the significance of the data, the relationship between soil element content and other soil properties and concentrations of cadmium, lead, and other elements in specific crops. The data and relationship among crop concentrations, soil parameters, and crop production practices will be scientifically analyzed, evaluated, and interpreted by professional staff members of SCS, SEA-AR, FDA, and EPA.

B. *Responsibilities of Each Party.* 1. *Mutual.* a. Investigations under this agreement will be jointly planned and conducted, and data which are compiled shall be prepared, analyzed, shared, and mutually interchanged by the parties. The progress of the study shall be reviewed quarterly and necessary adjustments made at that time. Representatives of SCS, SEA-AR, EPA, and FDA shall meet at least semiannually to discuss the project's progress.

b. Any equipment purchased by USDA under this agreement is to be the property of the USDA after the study is complete. FDA will pay for the equipment it needs from its own funds and retain title to the equipment.

c. The results of the investigations herein outlined, if published, shall be authored by the USDA, FDA and EPA. In the event of disagreement among USDA, FDA, and EPA, any party may publish results on its own responsibility, giving proper acknowledgement of cooperation. For inservice use, the USDA may further publish procedural documents.

d. Details of the following items are provided in the Appendix which is made part of the agreement. However, plans cannot be fully finalized at this time (such as crop selection priorities, elements analyzed, detection limits, etc.) and these details will be resolved by mutual agreement. The resulting protocols should be written by the responsible agencies (sampling and shipping, USDA; sample preparation and analysis, FDA; data storage, USDA) and forwarded, during an early phase of the work, to the other parties to the agreement.

(i) List of crops, arranged in order of priorities.

(ii) Location of sites and number of samples of each crop.

(iii) List of elements and detection limits.

(iv) Sampling schedules and procedures.

(v) Analyses—quality control procedures.

2. *SCS.* SCS will provide the required personnel, equipment, and facilities to perform the sampling of plants and soils and the analysis of soils. SCS will provide senior scientists knowledgeable in minor elements in crops and soils to help with planning, execution, and evaluation of the project, and qualified field soil scientists to collect the samples.

3. *SEA-AR.* SEA-AR will provide senior scientists knowledgeable in the area of micro elements in crops and soils to support planning of the project and evaluation of results.

4. *FDA.* FDA will provide the required personnel, equipment and facilities to perform the analyses of the crops. It will provide the data in mutually acceptable form to USDA and EPA, and summary reports on analytical methodology used.

C. *Reports.* 1. *Quarterly Progress Reports.* Six copies each are provided by USDA and by FDA to the other parties of this agreement.

2. *Status Reports.* Due (5 copies) after the completion of the collection and the analysis of each crop.

3. *Draft Final Report.* A final report is to be written by USDA personnel and submitted to EPA and FDA Project Officers (5 copies) for review 90 days prior to end of project.

4. *Final Report.* Original camera-ready copy plus five additional copies. The final report will be prepared in accordance with the format and instructions contained in the EPA "Handbook for Preparing Research and Development Reports."

5. *Notice of Research Project.* Within 20 days of the effective date of this agreement the USDA/SCS shall submit an executed copy of EPA Form 5760.1, Notice of Research Project, to the Technical Information Staff.

IV. Project Officers and Project Director

Project director:

Dr. R. B. Daniels, Soil Survey Investigations Division, Soil Conservation Service, U.S. Department of Agriculture, Rm. 5386, S. Agriculture Bldg., Washington, D.C. 20013. (202-447-4991).

Project officers:

G. Kenneth Dotson, Wastewater Research Division, Municipal Environmental Research Laboratory, 26 West St. Clair St., Cincinnati, Ohio 45268, (513-684-7661).

Dr. George E. Parris, Division of Chemical Technology (HFF-424), Food and Drug Administration, Bureau of Foods, 200 C St., SW., Washington, D.C. 20204, (202-245-1380).

Dr. Jesse A. Lumin, National Program Staff, Environmental Quality, Science Education Administration-Agriculture Research, Bldg. 005-BARC-WEST, Beltsville, MD 20705. (301-334-3278).

V. Funds

EPA will reimburse USDA/SCS and SEA-AR through SCS for actual costs incurred in the performance of the work described in Section III in an amount not to exceed $100,000 per year, except not to exceed $90,000 in FY 1979. FY 1979 funds must be obligated before September 30, 1980. USDA/SCS will request reimbursement by itemized SF 1081 submitted quarterly to EPA Accounting Operations Office, Cincinnati, Ohio 45268. Requests will cite the number of this agreement together with the following accounting information:

Appropriation—689/00107.
Account Number—982163COBA.
Document Control Number—K00031.
Object Class—2570.

Appropriation—689/00107.
Account Number—960761DOAL.
Document Control Number—XM0025.
Object Class—2570.

FDA has allocated $130,000 for FY 1979 and plans to allocate $100,000 for FY 1980–82 for a total of $430,000 to this project. These funds will be used within FDA to support Cin-DO participation in this effort.

VI. Authority

This agreement is entered into under the authority of Section 104 of the Federal Water Pollution Control Act Amendments dated October 1972 (EPA) and of the Economy Act approved June 30, 1952, as amended 31USC686.

VII. Period of Agreement

This agreement, when accepted by all parties, will have an effective period of performance from February 1, 1979, through September 30, 1980, and may be terminated by any of the parties upon sixty (60) day advance written notice to the others. Upon termination, payment will be made only for work completed to date of termination.

The agreement may be modified by amendment duly executed by authorized officials of the EPA, FDA, and the USDA, provided such modification does not extend the agreement beyond the close of the fiscal year in which the work is completed. It is anticipated that a period of 48 months will be required to complete the work.

It is the intent of the parties to fulfill their obligations under this agreement. Commitments cannot be made beyond the period for which funds have been appropriated by Congress. In the event funds from which the USDA/SCS and SEA-AR, and the FDA may fulfill their obligations are not appropriated, the agreement will automatically terminate. Reimbursement will then be for work completed that is otherwise eligible for reimbursement prior to the effective date of termination.

VIII

A. U.S. Environmental Protection Agency, s/L. W. Lefke, for Francis T. Mayo, Director, Municipal Environmental Research Laboratory, Cincinnati, Ohio 45268, date: June 19, 1979.

B. Soil Conservation Service, USDA, s/R. M. Davis, Administrator, Soil Conservation Service, date: June 8, 1979.

C. Science and Education Administration (Agricultural Research), USDA, s/T. B. Kinney for T. W. Edminster, Deputy Director, Science & Education Administration—Agricultural Research, date: June 11, 1979.

D. U.S. Food and Drug Administration, s/Joseph P. Hile, Associate Commissioner for Regulatory Affairs, date: June 13, 1979.

Effective date. This Memorandum of Understanding became effective February 1, 1979.

Dated: July 25, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[Fr Doc. 79-23495 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-03-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by Alan L. Hoeting, Director, Detroit District Office, Detroit, MI.

DATE: The meeting will be held at 9:30 a.m., Tuesday, September 11, 1979.

ADDRESS: The meeting will be held at the George Potter Larrick Bldg., Conference Room, 1560 E. Jefferson, Detroit, MI 48207.

FOR FURTHER INFORMATION CONTACT: Diane M. Place, Consumer Affairs Officer, Food and Drug Administration, 1560 E. Jefferson, Detroit, MI 48207, 313–226–6260.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Detroit District Office, and to contribute to the agency's policymaking decisions on vital issues. The agenda includes food labeling survey, patient package inserts and the over-the-counter drug review.

Dated: July 25, 1979

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-23496 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-03-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by Henry P. Roberts, Director, Minneapolis District Office, Minneapolis, MN.

DATE: The meeting will be held at 2:30 p.m., Wednesday August 8, 1979.

ADDRESS: The meeting will be held at Federal Courts Bldg., Rm. B-44, 110 S. 4th., Minneapolis, MN 55401.

FOR FURTHER INFORMATION CONTACT: Blanche L. Erkel, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–725–2121.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Minneapolis District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 25, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-23502 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79F-0255]

Kelco Division of Merck & Co., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Kelco Division of Merck & Co., Inc., has filed a petition proposing that the food additive regulations be amended to provide for use of Xanthan Gum as a stabilizer, emulsifier, thickener, suspending agent, or bodying agent in feed and drinking water of animals.

FOR FURTHER INFORMATION CONTACT: William D. Price, Bureau of Veterinary Medicine (HFV-123), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3442.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP-2174) has been filed by Kelco Division of Merck & Co., Inc., 8355 Aero Drive, San Diego, CA 92123, proposing that Part 573—Food Additives Permitted in Feed and Drinking Water of Animals, be amended to provide for the use of Xanthan Gum, polysaccharide gum derived from *Xanthomonas campestris* by a fermentation process,

as a stabilizer, emulsifier, thickener, suspending agent, or bodying agent in feed and drinking water of animals.

The environmental impact analysis report and other relevant material are being reviewed to determine whether the proposed use of the additive will have a significant environmental impact. In accordance with the provisions of § 25.25(b) (21 CFR 25.25(b)) of the environmental impact regulations, any environmental impact consideration of the final action on this petition will be addressed in a future publication.

Dated: July 24, 1979.

Marvin A. Narcross,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 79-23499 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 76N-0411]

Naprosyn Tablets; Rescission of Proposal To Withdraw Approval of New Drug Application

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice announces that Naprosyn Tablets have been evaluated as safe and effective for use in relief of the signs and symptoms of rheumatoid arthritis. Previously FDA had proposed to withdraw approval of the drug on the ground that a portion of the new drug application pertaining to a study on safety contained untrue statements of material fact; however, a new study submitted by the sponsor has established the safety of the drug.

FOR FURTHER INFORMATION CONTACT: Carol A. Kimbrough, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of October 15, 1976 (41 FR 45605), the Director of the Bureau of Drugs announced an opportunity for hearing on a proposal to withdraw approval of the new drug application (NDA 17-581) for Naprosyn Tablets held by Syntex Corporation, 3401 Hillview Ave., Palo Alto, CA 94304 on the ground that it contained untrue statements of material fact. Naprosyn (naproxen) is a nonsteroidal anti-inflammatory agent indicated for use in the management of rheumatoid arthritis. Because the drug is intended for long-term administration to humans when appropriate, one test required by FDA as essential to the determintion of its safety is a long-term animal toxicity study designed to show the effects of chronic exposure to the drug over a substantial portion, or all, of the life span of the animal. To comply with this requirement, Syntex had submitted, as part of its NDA, a report of a chronic oral toxicity study in rats carried out by Industrial Bio-Test Laboratories (IBT) under Syntex sponsorship (the "IBT rat study"). This was the only animal toxicity study adequate for evaluation of long-term safety when the NDA was approved. Two other animal studies also submitted were inadequate for this purpose because they were not carried out over the major portion of the life span of the animals and did not involve a sufficient number of animals. Therefore, when investigation revealed that the performance and the reports of the IBT rat study were so seriously flawed as to make them incapable of serving as the basis for an evluation of long-term safety, the Bureau instituted procedures to withdraw approval of the drug.

On November 8, 1976, Syntex requested a hearing. Concomitantly, it began a new study, an 800-rat 2-year toxicity/carcinogenicity study (the "Syntex rat study") on Naprosyn.

The Syntex rat study has now been completed and evaluated as establishing the safety of Naprosyn for use as labeled. In addition, a field investigation conducted by the Bureau verifies that the Syntex rat study is scientifically valid and was conducted in accord with the standards expressed in the good laboratory practice regulations.

Accordingly, the notice of opportunity for hearing is rescinded and this proceeding terminated.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-1053 as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82).

Dated: July 25, 1979.

Jerome A. Halperin,

Acting Director, Bureau of Drugs.

[FR Doc. 79-23501 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 77N-0145 (Sub 2)]

Orphengesic Tablets (Orphenadrine Citrate With Aspirin, Phenacetin, and Caffeine); Denial of Hearing; Refusal To Approve Abbreviated New Drug Application; Declaration of "New Drug" Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs denies a hearing on the refusal to approve an abbreviated new drug application (ANDA 85-682) for Orphengesic Tablets (orphenadrine citrate 25 milligrams in combination with aspirin 225 milligrams, phenacetin 160 milligrams and caffeine 30 milligrams) submitted by Inwood Laboratories. He also announces that the opportunity for a hearing on the "new drug" status of Orphengesic has been waived. The Commissioner refuses approval of Inwood's application on the grounds that (a) it does not contain reports of investigations or adequate tests, by all methods reasonably applicable, to show whether or not Orphengesic is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, (b) upon the basis of the information submitted as part of the application, FDA has insufficient information to determine whether Orphengesic is safe for use under such conditions, and (c) evaluated on the basis of the information submitted as part of the application and other public information before FDA with respect to Orphengesic, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under such conditions. In addition, the Commissioner declares Orphengesic to be a "new drug" as defined in the Federal Food, Drug, and Cosmetic Act.

EFFECTIVE DATE: August 30, 1979.

FOR FURTHER INFORMATION CONTACT: Ronald L. Wilson, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 29, 1977 (42 FR 21847), the Director of the Bureau of Drugs (the Director) issued a notice of opportunity for hearing on a proposal to refuse approval of the abbreviated new drug application (ANDA 85-682) filed by Inwood Laboratories (Inwood), 300 Prospect St., Inwood, NY 11696, for the drug product Orphengesic Tablets (Orphengesic) and to declare Orphengesic to be a "new drug" within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act), 21 U.S.C. 321(p). That notice also referred to ANDA 85-445 (X-Otag Plus Tablets), which has been dealt with previously (see 43 FR 4682; Feb. 3, 1978). This notice thus pertains only to ANDA

85-682 for Orphengesic. The notice does not concern the full new drug application, NDA 18-145, also submitted by Inwood for Orphengesic. That application is still being evaluated.

In response to the notice of opportunity for hearing, Inwood requested a hearing on May 24, 1977. On June 28, 1977, Inwood filed a "Submission of Information, Analyses and Views in Response to Notice of Opportunity for Hearing on Orphengesic Tablets." Thereafter, on August 5, 1977, Inwood provided a supplemental submission. Inwood contended that the supplemental submission should be accepted, though untimely, because it reflected information obtained from a delayed FDA response to a request for documents under the Freedom of Information Act. The agency has carefully reviewed these submissions and concludes that there exists no genuine and substantial issue of material fact which would justify a hearing with respect to either the refusal to approve ANDA 85-682 or the "new drug" status of Orphengesic.

FDA regulations, 21 CFR 314.200(g), clearly state: "A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requries a hearing with respect to the particular drug product(s) specified in the request for hearing." In the notice of opportunity for hearing on Orphengesic, the Director stated that failure by Inwood to show the existence of a genuine and substantial issue of fact would result in the entry of summary judgment against Inwood by the agency. The two submissions by Inwood contain no data and little information. Rather, the submissions are made up of arguments and unsupported allegations. For this reason, the agency has found that summary judgment is appropriate with respect to each of the issues raised in the notice of opportunity for hearing.

I. The Drug

Orphengesic Tablets contain the following active ingredients: orphenadrine citrate (25 mg), aspirin (225 mg), phenacetin (160 mg), and caffeine (30 mg).

II. Recommended Uses

The indications in the labeling for Orphengesic, as stated in the proposed package insert, are as follows: "Orphenadrine citrate is indicated as an adjunct to rest, physical therapy, and other measures for the relief of discomfort associated with acute painful musculoskeletal conditions. The mode of action of the drug has not been clearly identifed, but may be related to its sedative properties. Orphenadrine citrate does not directly relax tense skeletal muscles in man." Orphengesic is a prescription drug. The recommended dosage for adults is one to two tablets, three to four times daily.

III. Medical Documentation To Support Claims of Safety and Effectiveness

Because this application was submitted as an ANDA, no safety and effectiveness data were included in it, 21 CFR 314.1(f). Because use of an ANDA for Orphengesic is inappropriate, see Legal Arguments below, the lack of safety and effectiveness data requires refusal of approval of this application (section 505(d) of the act (21 U.S.C. 355(d)). The lack of such data in the request for hearing requires denial of that request, 21 CFR 314.200.

IV. Legal Arguments

The issues to be discussed in this section fall into two categories. The first has to do with the appropriateness of an ANDA for Orphengesic. The agency concludes that the theory on which Inwood bases its claim of eligibility for approval of an ANDA is incorrect. The agency further concludes that, when the correct standards are applied, no showing has been made that there is any genuine factual issue with respect to the eligibility of Orphengesic for approval of an ANDA.

The second portion of this section deals with the declaration that Orphengesic is a "new drug." As will be discussed in more detail below, Inwood's theory with respect to the propriety of consideration of an ANDA is, in effect, that such applications are authorized when the drug in question is no longer a "new drug." Thus, although Inwood has waived its opportunity for a hearing on the question of Orphengesic's "new drug" status, its arguments will, for purposes of completeness, be considered in the ruling on that issue.

A. Propriety of an ANDA for Orphengesic

1. *The correct standard.* Inwood's request for a hearing demonstrates a misunderstanding about the circumstances in which submission of an ANDA for a drug is appropriate. An ANDA, whose contents are described in 21 CFR 314.1(f), may be utilized only "if the drug is intended for human use and is one for which an abbreviated new drug appliation has been found by the Food and Drug Administration to be sufficient, * * *." 21 CFR 314.1(a)(1). Because FDA has made no finding that an ANDA may be submitted for Orphengesic, the submission of an ANDA for Orphengesic is not appropriate.

An example of a finding by the FDA that submission of an ANDA is appropriate appears in DESI (Drug Efficacy Study Implementation) Notice 6566 (39 FR 9487; March 11, 1974), which covers Norflex Tablets. In that notice FDA found that ANDA's could be submitted for products that, like Norflex Tablets, contain 100 mg of orphenadrine citrate. The only theory on which that finding could be extended to include Orphengesic is that, pursuant to 21 CFR 310.6(b), Orphengesic is "identical, related, or similar" to Norflex, and, based upon that similarity, appropriately qualified experts would conclude that the Norflex finding applies to Orphengesic.

As explained in the April 29 notice of opportunity for hearing at 42 FR 21851, however, under 21 CFR 300.50(a) each component of a fixed combination drug such as Orphengesic must be found to make a contribution to the claimed effect of the combination. Thus, the finding that orphenadrine citrate alone is effective would not be sufficient to support a determination that the combination of orphenadrine citrate and aspirin, phenacertin, and caffeine (APC) is effective. To quote from that notice at 42 FR 21851:

> The Food and Drug Administration has at no time since DESI Notice 6566 was published in 1974 concluded that it provides that orphenadrine citrate in combination with an analgesic is effective for the same indication as the single entity.

The April 29 notice stated that FDA was not aware that qualified experts have reached such a conclusion. In its request for a hearing, Inwood provided no evidence that experts would reach such a conclusion. The Commissioner therefore concludes that FDA has made no finding that Orphengesic is eligible for the submission of an ANDA.

2. *Contention That Orphengesic Is Eligible for ANDA Status Despite Lack of Finding of Eligibility.* As stated in the April 29 notice of opportunity for hearing, an ANDA is a form of new drug application that is deemed to include, by reference, safety and effectiveness data that have already been reviewed and found adequate. The agency has not provided for and could not, within the limits of his statutory authority, provide for, the approval of new drug applications that did not include, either physically or by reference, the safety and effectiveness data required by section 505 of the act.

Inwood's hearing request suggests that Inwood believes that an ANDA is something different from a new drug application. Inwood seems to argue that FDA, by authorizing use of an ANDA, is, in effect, declaring that the drug involved is "generally recognized as safe and effective" within the meaning of section 201(p) of the act, as long as certain manufacturing and bioavailability data have been submitted. Such a declaration would, if the requirements of section 201(p)(2) of the act (21 U.S.C. 321(p)(2)) had been met, make the drug in question not a "new drug" as defined by the statute.

The agency rejects this theory. Although FDA's position on what an ANDA represents was stated clearly in the notice of opportunity for hearing, the agency recognizes that one statement—made by FDA in the past, and quoted in that notice—may have contributed to the confusion evidenced by Inwood's submission, i.e., that "an ANDA is appropriate only for those drugs which from a generic standpoint are generally recognized as safe and effective when they are properly labeled and manufactured" (42 FR 21851; April 29, 1977). This statement did not, however, as is clear from the context in which it is quoted, represent an agency position that approval of an ANDA was a declaration that the drug involved was "generally recognized as safe and effective." To the extent that the statement may be construed as supporting such a position, it is explicitly disavowed.

Should there by any further question on this point, it would be resolved by reference to the DESI notice upon which approval of an ANDA would be based. In such notices (see, e.g., DESI 6566, discussd above), drugs are often declared to be new drugs even though the drugs are found to have evidence of effectiveness sufficient to justify approval of a new drug application, thus allowing use of an ANDA for those drugs. (See, e.g., *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 631, (1973): "The Act is designed so that drugs on the market, unless exempt, will have mustered the requisite scientifically reliable evidence of effectiveness long before they are in a position to drop out of active regulation by ceasing to be a 'new drug'.") It would be anomalous for the agency, by approving an ANDA, to declare a drug not to be a new drug upon the basis of a Federal Register announcement that the drug is a new drug.

In support of its position on the circumstances in which an ANDA is authorized, Inwood relies on a letter to Eric P. Stoer, Esq., former Commissioner Schmidt, dated April 2, 1974. In that letter, Commissioner Schmidt declared that a combination of propoxyphene HC1 and acetaminophen was eligible for ANDA status. FDA recognizes that this letter, because it is framed in terms of "general recognition," seems to support Inwood's interpretation of the standards for issuance of an ANDA. As noted previously, however, this interpretation is incorrect and is disavowed.

The Stoer letter contains the following language:

> I would caution, however, that this conclusion [that an ANDA is appropriate] is not to be understood as a general precedent applicable to other combinations. Each of these circumstances must be analyzed on the specific facts involved.

The decision in the Stoer letter was based on unique considerations regarding the safety of the active ingredients, the variety of combinations previously approved on the basis of clinical trials, the literature documenting the effectiveness of each of these combinations, and the widespread experience with these combinations. It is by no means certain that, were the decision on this question to be made today, the result would be the same. In any case, the FDA is not prepared to extend the Stoer letter beyond its own particular facts.

It should be noted that, even were Inwood's theory accepted, no ANDA would be appropriate for Orphengesic unless Orphengesic were "generally recognized" by experts as safe and effective, i.e., unless Orphengesic were not a "new drug." As the following discussion shows, Inwood has not justified a hearing on the issue of whether Orphengesic is a "new drug." Thus, even under Inwood's own theory, no hearing on the denial of the Orphengesic ANDA is appropriate.

B. New Drug Issue

In the April 29 notice of opportunity for hearing, Inwood was given an opportunity for a hearing on the proposed order declaring "that * * * Orphengesic [is a] new [drug] as defined in section 201(p) of the act and information relating to the safety and effectiveness of * * * Orphengesic must be contained in a new drug application in order to be approved under section 505 of the act." 42 FR 21852. Inwood did not request a hearing on this issue; it limited its request to the issues related to the denial of the ANDA for Orphengesic. However, Inwood, in its submission of information, "specifically reserves the right to assert 'old drug' status for the product in the event there are direct or collateral judicial proceedings in this matter" (Submission at 6 n. 2). However, Inwood cannot prevent FDA from declaring Orphengesic to be a new drug simply by stating that Inwood is reserving its rights. Inwood has been granted an opportunity to justify a hearing on this issue, and it has forgone that opportunity. Its right to any hearing has thus been waived. 21 CFR 314.200(e).

However, because Inwood has misunderstood the standard for issuance of an ANDA, much of its submission deals with the question of whether Orphengesic is in fact "generally recognized" as safe and effective. The arguments that Inwood made in the context of its request for approval of an ANDA are thus relevant to the new drug issue and have, for purposes of completeness, been considered by FDA. FDA concludes that Inwood has not presented any issue of material fact with respect to the new drug question.

1. *The Standards.* The term "new drug" is defined by section 201(p)(1) of the act (21 U.S.C. 321(p)(1)) as:

> Any drug * * * the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof * * *.

(This definition is further qualified by section 201(p)(2) of the act.) Although the act defines "new drug," it does not contain a definition of "generally recognized * * * as safe and effective."

In 1973, the Supreme Court, in *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973), interpreted the term "general recognition" as it pertains to the effectiveness of a drug as follows:

> The thrust of § 201(p) is both qualitative and quantitative. The Act, however, nowhere defines what constitutes "general recognition" among experts. * * * We agree with FDA, however, that the statutory scheme and overriding purpose of the 1962 amendments compel the conclusion that the hurdle of "general recognition" of effectiveness requires at least "substantial evidence" of effectiveness for approval of an NDA. In the absence of any evidence of adequate and well-controlled investigation supporting the efficacy of [a drug], *a fortiori* [that drug] would be a "new drug" subject to the provisions of the Act. 412 U.S. at 629–30.
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> * * * * *
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> We accordingly have concluded that a drug can be "generally recognized" by experts as effective for intended use within the meaning of the Act only when that expert consensus is founded upon "Substantial evidence" as defined in section 505(d). 412 U.S. at 632.

The term "substantial evidence" is defined in the last sentence of section 505(d) of the act, as:

> * * * evidence consisting of adequate and well-controlled investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof.

Although the issues in *Hynson* and its companion cases dealt with the effectiveness of the drugs involved, the Court's holding is equally applicable where safety is an issue. Thus, to be considered not a new drug, a drug must have accumulated the quantum of safety data that would be required for approval of an NDA were one submitted. The conclusion that adequate safety data are necessary for non-new drug status is supported by the Court's holding in *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645 (1973), that "the reach of scientific inquiry under both section 505(d) and section 201(p) is precisely the same." 412 U.S. at 652. (Section 505(d) of the act details the safety, as well as the effectiveness, requirements for NDA approval.) See also 21 CFR 314.200(e)(1).

In *Bentex*, based on its discussion of the term "general recognition" in *Hynson*, the court concluded:

> Whether a particular drug is a "new drug" depends in part on the expert knowledge and experience of scientists based on controlled clinical experimentation *and backed by substantial support in scientific literature.*

412 U.S. at 652 (emphasis added). The requirement that a drug have adequate safety and effectiveness data, and also that the data be published in the scientific literature, is designed to assure that the community of qualified experts is aware of the data concerning the drug. Thus, general recognition of a drug would not exist merely because the required investigations had been performed, but not published in the scientific literature. The practical effect of the statutory system, as the Supreme Court observed in *Hynson, supra*, is that drugs will have accumulated sufficient scientific evidence to justify approval of an NDA "long before they are in a position to drop out of active regulation by ceasing to be a 'new drug' " (412 U.S. at 631).

Under the Supreme Court's interpretation of the act, therefore, general recognition of the safety and effectiveness of Orphengesic depends upon two criteria: (1) adequate investigations conducted by qualified experts establishing the safety and effectiveness of the drug and published in the scientific literature, and (2) expert consensus, based upon that evidence, that the drug is safe and effective.

With respect to the first criterion, the safety of Orphengesic must be established by adequate tests by all methods reasonably applicable (see 21 U.S.C. 355(d); 21 CFR 314.111(a)(1)). In addition, the effectiveness of Orphengesic must be established by "substantial evidence," i.e., adequate and well-controlled investigations, including clinical investigations involving human beings as test subjects. The requirements for an adequate and well-controlled clinical investigation are set forth in 21 CFR 314.111(a)(5) (see discussion below). The results of both types of testing must be available to the community of experts in the evaluation of drug safety and effectiveness by means of publication in the scientific literature.

To satisfy the second criterion, a showing must be made of recognition, among the qualified experts, which is "general." At a minimum, "general recognition" requires recognition "extensively, though not universally; most frequently, but not without exception." (*United States* v. *7 Cartons, More or Less*, 293 F. Supp. 660, 662–63 (S.D. Ill. 1968) *aff'd*, 424 F.2d 1364 (7th Cir. 1970)).

2. *Data Necessary for Approval of a New Drug Application.* a. *Clinical Investigations.* In its hearing request, Inwood asserted that "submission of data is neither necessary nor appropriate in this proceeding" (Submission at 13). In a supplemental submission, however, Inwood referred to a nunmber of references from the publicly available data in the new drug application for a drug product called Norgesic (NDA 13–416). Norgesic's active ingredients, recommended dosage, and indications are identical to those of Orphengesic. The NDA for Norgesic, however, was approved after 1962. With a rare exception not applicable here, FDA's policy does not provide for the approval of ANDA's for drugs identical to drugs subject to NDA's approval after 1962.

The studies in Inwood's supplemental submission were neither submitted nor evaluated by Inwood in the manner required by 21 CFR 314.200(d) and (e). FDA regulations state explicitly: "The failure to sumbit such scientific evidence or a submission that is not in the format or does not contain the analyses required by paragraph (d) of this section shall constitute a waiver of any [contention that a drug is not a new drug]," 21 CFR 314.200(e)(1). Thus, even if Inwood's submission were regarded as a request for a hearing on the new drug issue, Inwood has failed to comply with clearly articulated regulations and therefore has waived its right to a hearing on that issue.

The NDA for Norgesic contains several studies of APC and orphenadrine citrate. One of those studies—the Birkeland study, which is discussed below—is an adequate and well-controlled clinical investigation showing that the combination is effective. However, Inwood did not cite the Birkeland study in its supplemental submission, and none of the studies that are referred to in that submission constitutes an adequate and well-controlled investigation showing Orphengesic to be an effective combination drug. Because Orphengesic is a combination, each component must be shown in well controlled studies meeting the criteria set forth in 21 CFR 314.111, to make a contribution to the drug's effectiveness or safety, i.e., the combination must be shown to be either more effective or more safe than its components separately, 21 CFR 300.50(a). (For this purpose, APC is considered a single component.) In addition, it must be demonstrated that there is a significant patient population that requires the therapy for which the drug is prescribed, 21 CFR 300.50(a). The following paragraphs discuss the failure of each of the referenced studies to support a conclusion that Orphengesic is effective in accordance with the agency's criteria for adequate and well-controlled clinical investigations in 21 CFR 314.111:

Ginzel Report. This study, Ginzel, F. H., "The Blockade of Reticular and Spinal Facilitation of Motor Function by Orphenadrine," *Journal of Pharmacology and Experimental Therapeutics*, 154(1):128–41, 1966, is a pre-clinical study of orphenadrine in anesthetized, spinal and decerebrate cats. The study deals neither with human beings nor with the drug in question. It cannot be considered an adequate and well-controlled clinical investigation showing the effectiveness of Orphengesic.

Wagner Report. This report, Wagner, C. R., "A New Nonaddictive Analgesic in Oral Surgery," *Journal of the California Dental Association*, 43:15–16, 1967, summarizes data from an unselected group of patients seen in a dental practice. Each patient received one or two tablets of the Norgesic combination after having been subjected to a dental procedure (usually one or more extractions) under general, local,

or no anesthesia. Satisfactory relief of pain was reported in 74 of 88 patients who received general anesthesia, 8 of 13 who received local anesthesia, and 7 of 8 who received no anesthesia. According to the investigator, this was not a controlled double-blind study. It did not compare the effectiveness and safety of Orphengesic with the effectiveness and safety of each of its components. Because no control group was utilized, the study was not an adequate and well-controlled clinical investigation, 21 CFR 314.111(a)(5)(ii)(*a*)(*4*). In the absence of a control group, other criteria of a well-controlled study cannot be met, such as unbiased assignment to treatment groups and minimization of investigator bias, 21 CFR 314.111(a)(5)(ii)(*a*) (*2*)(*ii*) and (*3*).

Lamphier Report. This report, Lamphier, T. A., "An Effective Analgesic in Orthopedic Patients," *Medical Digest,* 12:93–95, 1966, is a study in which 100 ambulatory office patients complaining of severe and incapacitating pain due to industrial injuries were treated with one tablet of Norgesic administered four times daily. The duration of therapy varied from 21 to 91 days. The report states that 83 percent of the patients had excellent symptomatic relief. No explanation is given of how the extent of relief was determined, i.e., whether that conclusion was based on the subjective evaluation of the patient or the subjective or other evaluation of the investigator. Again, there was no comparison of Orphengesic with its components, so that the study cannot supply the information required by 21 CFR 300.50. The study had no control group and is, for that reason, not an adequate and well-controlled clinical investigation, 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*4*).

Seagraves Study. This study, Seagraves, J. E., et al., "Management of Pain in Acute and Chronic Orthopedic Conditions," *Illinois Medical Journal,* 531–533 (November, 1965), was a retrospective report on pain management in 75 orthopedic patients with conditions ranging from strains to inflammatory disorders. Patient were 15 to 85 years of age. The Norgesic combination was the sole medication given at a rate of one tablet four times a day in 72 of the patients and two tablets four times a day in 3 patients. The treatment period varied from 1 day to more than 1 year. The results were classified as satisfactory for 73 percent of the patients and unsatisfactory for the remainder. The report does not purport to be a clinical trial and does not constitute an adequate and well-controlled clinical investigation comparing Orphengesic with its components. 21 CFR 300.50. The study did not have a control group, as required by 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*4*). Furthermore, the report is inadequate in that the subjects were affected with a variety of problems (e.g., fractures, inflammatory disorders, musculoskeletal disorders) that would be expected to respond differently to different types of medication, see 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*).

Batterman Study. This study, Batterman, R. C., "Methodology of Analgesic Evaluation: Experience with Orphenadrine Citrate Compound," *Current Therapy Research,* 7:639–647, 1965, is a report of two clinical studies that compared Norgesic against its components, i.e., APC and orphenadrine citrate, and against a placebo. The two studies utilized different techniques. In each, analysis of the results obtained did not show that the Norgesic compound was more effective than its components.

In the first study, 38 patients with chronic pain and disability from arthritic disorders were entered into a crossover study in which each patient was to receive the four regimens in random order. Only 23 patients, however, were given all four regimens. Four patients received three preparations; eight patients received two preparations; three patients received only one. Statistical analysis showed that pain relief was not significantly greater in any one group than in any other, even utilizing a P value at less than 0.1 as a test of statistical significance. ($P = 0.05$ is a common standard for statistical significance.) The incidence of side effects was greatest with the combination. Thus the study not only failed to show a contribution of each of the components, as required by 21 CFR 300.50, but it also failed to show that the combination itself was more effective than a placebo.

In the second study, 78 patients were administered one or more of the four regimens. The stated primary purpose of this study was to administer only one drug to each of the patients over a longer period of time (2 to 4 weeks) than that used in the first test. However, in some cases, when the individual investigator concluded "that the optimum results of any trial were achieved" (page 640), the first drug was discontinued and another drug was supplied to the same patient (i.e., a "cross-over" techiques was utilized). The four preparations in the study were color-coded; the subject and the investigator therefore knew that there was a difference between products. This is a primitive method of blinding and is susceptible to breakdown if, for any reason, it becomes necessary to know which drug any patient is receiving, e.g., if the patient has an adverse effect. This study is thus inadequate under 21 CFR 314.111(a)(5)(ii)(*a*)(*3*) because the difference in appearance of the medications administered compromised, at least to a certain extent, the blinding, so that the subject, or the investigator, could have been biased by the appearance of a drug product.

More important, the study failed to show a contribution of each component to effectiveness. The investigator reported that: "With long-term administration, the over-all effect of orphenadrine citrate compound [Norgesic] was the same as APC" (p. 643). In fact, the reported results show that the Norgesic combination did slightly less well than APC alone. See discussion of 21 CFR 300.50 above. Again, the combination was responsible for the largest number of reported adverse effects.

Despite the failure of either test to show improvements with the combination that were significantly greater than improvements seen with the components, the investigator states that "the clinical impression gained by patients [sic] acceptance and comparative statements which cannot be given numbers, favors the combination." This sort of observation cannot be considered "controlled." 21 CFR 314.111(a)(5)(ii)(*a*)(*4*) clearly requires a quantitative comparison of treatments. The "clinical impressions" of the investigators, without any supporting data (in fact with controlled data tending to contradict the impression), do not provide evidence for a conclusion that the combination drug is effective.

No other studies are cited in support of the effectiveness of this combination in any written submission by Inwood. However, in a November 30, 1977 meeting, counsel for Inwood informed an attorney in the office of the Chief Counsel of the FDA that Inwood wished also to rely upon two studies, relating to Norgesic, that had been referred to in the opinion in *United States* v. *An Article of Drug . . . X-Otag Plus,* 441 F. Supp. 105 (D. Col. 1977), appeal docketed, No. 77–1946 (10th Cir. Dec. 29, 1977). This action cannot be considered a submission of information to the agency in response to a request for a hearing, and these studies are not properly before the agency for consideration in this proceeding. See discussion of 21 CFR 314.200(e)(1)

above. However, to provide the most complete record possible, these studies will be considered:

Birkeland Study. This study, Birkeland, I. W., and D. K. Clawson, "Drug Combinations with Orphenadrine for Pain Relief Associated with Muscle Spasm," *Journal of Clinical Pharmacology and Therapeutics,* 9(5):639–646, 1968, is regarded by FDA as acceptable as an adequate and well-controlled clinical investigation to show the Norgesic combination's effectiveness.

Cass Study. This study, Cass, L. J., and W. S. Frederik, "An Evaluation of Orphenadrine Citrate in Combination With APC as an Analgesic," *Current Therapeutic Research,* 6(6):400–408, 1964, is not acceptable as a clinical evaluation of this drug. FDA disqualified Dr. Cass as a clinical investigator because of proof that his testing included falsified data. Evidence in the files of FDA shows that, in fact, this particular study involved falsification of data. The study, for that reason, must be totally disregarded. (Even if the study were considered valid, deficiencies in its design would prevent it from being regarded as an adequate and well-controlled investigation.)

Therefore, Inwood has submitted no adequate and well-controlled clinical investigations, available to experts through publication in the scientific literature, that show that Orphengesic is effective for its indicated uses. The agency is aware of only one study, that of Birkeland and Clawson, discussed above, that might appropriately be used to show the effectiveness of this drug. That study, as noted previously, is not properly before the agency in this proceeding.

b. *Safety data.* No safety data were either submitted or referred to by Inwood in its submission in support of its hearing request. Statements that a similar drug has been used for many years without incident are not acceptable to show the drug's safety.

3. *Consensus of expert opinion.* Inwood has submitted no evidence of any expert consensus with respect to the safety and effectiveness of Orphengesic. In fact, Inwood apparently takes the position that it is not required to do so. Inwood states: "Nor should the fact that Inwood does not cite any scientific publication or statement of expert opinion in support of the general recognition of the safety and efficacy of its product [derogate from general recognition]" (Submission at 9). Inwood instead relies on the fact that a drug product with identical active ingredients (i.e., Norgesic) has been marketed for 13 years with FDA approval. A drug is not, however, necessarily generally recognized by experts as safe and effective merely because it is approved by FDA. See discussion of Relevance of Norgesic Experience, below. There may well be many in the medical community who would question the safety and effectiveness of the approved product.

The burden is on Inwood to make some showing that there is a factual issue on the question of whether there is general recognition of the safety and effectiveness of its product among appropriately qualified experts. As the Director stated in the April 29 notice of opportunity for hearing, "[a]ssertions that X–Otag Plus or Orphengesic are not 'new drugs,' without any supporting evidence, do not create a presumption against new drug status" (42 FR 21850). Rather the opposite is true: Once a proposed declaration that a drug is a new drug is issued, the burden is, and must be, upon the party disputing this assertion to present evidence that there is a factual issue warranting a hearing. See *United States* v. *Allan Drug Corp.,* 357 F.2d 713 (10th Cir.), cert. denied, 385 U.S. 899 (1966).

4. *Significance of Past Use of Ingredients of Orphengesic.* Inwood, in its supplementary submission (at 4), suggests that there is no need for adequate and well-controlled investigations to show the general recognition of effectiveness of orphengesic if "the product consists entirely of active ingredients which have been long used and recognized as safe and effective." Although the agency rejects this proposition, it is apparent in any case that the ingredients of which Orphengesic is composed are themselves new drugs. Thus, under FDA regulations, any combination containing those ingredients would itself be a new drug, 21 CFR 310.3 (h)(1).

As the notice of opportunity for hearing stated, orphenadrine citrate in the form of a drug called Norflex Tablets (100 mg) has been found to be a new drug by the FDA (see DESI notice 6566, 39 FR 9487; March 11, 1974). Orphenadrine citrate has in fact been treated as a new drug by FDA since 1959, when it was first introduced. To quote the notice of opportunity for hearing at 42 FR 21849:

> No significant volume of published literature or other indicators of scientific opinion have come close to the attention of FDA to suggest that, among qualified experts, orphenadrine citrate is now generally recognized as safe and effective for the indications set forth in the DESI notice 6566 [pertaining to Norflex] or for any other indications.

Although the Director has not proposed to make a final determination whether orphenadrine citrate alone is still a new drug, the lack of evidence that it has ceased to be a new drug means that, pursuant to 21 CFR 310.3(h)(1), there is a lack of any issue of fact concerning the new drug status of Orphengesic.

Similarly, APC, itself a combination drug, has not been found by the agency to be generally recognized as safe and effective or not to be a new drug. In fact, phenacetin, one of the ingredients in APC, has been found not to be "generally recognized" by experts as safe for over-the-counter use as an analgesic by the FDA Advisory Review Panel on Over-the-Counter Internal Analgesic and Antirheumatic Products (see 42 FR 35346; July 8, 1977). Similarly, APC, as a combination containing phenacetin, was found by that panel not to be "generally recognized" as safe for over-the-counter use. (See 42 FR 35371).

Even were the active ingredients of Orphengesic classified as non-new drugs, the use of the drugs in combination could make them new drugs, 21 CFR 310.3(h)(2). This necessarily follows from the combination policy set forth in 21 CFR 300.50. This policy is based on the fact that, because of drug interaction, the combination of two safe and effective drugs may be less safe or less effective than the component drugs administered separately. The policy also reflects a recognition that, because all drugs present some risk, the use of two drugs which provide no more benefit than one alone cannot be justified. Thus, a combination drug must be more safe or more effective than each of its components alone. Also, because the availability of combinations may encourage use of combinations where single ingredient drugs would be more appropriate, combinations are proper only where there is a significant patient population requiring the concurrent therapy for which the drug is offered.

5. *Relevance of Norgesic Experience.* As noted previously, the active ingredients in Orphengesic are identical to those in a drug product called Norgesic. Norgesic is the subject of a new drug application approved by the FDA in 1964. This fact does not provide a basis for a conclusion that Orphengesic is not a "new drug." As the notice of opportunity for hearing stated at 42 FR 21850:

> It is settled in the case law interpreting sections 505 and 201(p) of the act that the agency's finding that a drug is safe and effective under section 505 is not the same as, and is quite distinct from, general recognition

of safety and effectiveness. See, e.g., *Durovic v. Richardson*, 479 F.2d 242 (7th Cir. 1973), cert. den. 414 U.S. 944 (1973); *Bentex Pharmaceuticals, Inc., v. Richardson*, 463 F.2d 363 (4th Cir. 1972), rev'd on other grounds sub nom. *Weinberger v. Bentex Pharmaceuticals, Inc.*, 412 U.S. 645 (1973); *United States v. An Article of Drug . . . Furestrol*, 415 F.2d 390 (5th Cir. 1969); *AMP, Inc. v. Gardner*, 389 F.2d 825 (2d cir. 1968), cert. den. sub nom. *AMP, Inc.* v 393 U.S. 825 (1968); *Weinberger v. Hynson, Westcott & Dunning*, 412 U.S. 609, 631 (1973).

The standards for approval of a new drug application are, and should be, much less stringent than the standards for finding a drug to be exempt from any regulation at all, i.e., to be not a new drug. Congress clearly comtemplated that FDA, after careful review of the data submitted, would approve drugs in situations in which general recogniton could not be found. See, e.g., S. Rep. 1744, 87th Cong., 2d Sess. at 16 (1962), appearing in 1962 U.S. Code, Cong. & Admin. News at 2892:

> When a drug has been adequately tested by qualified experts and has been found to have the effect claimed for it, this claim should be permitted even though there may be preponderant evidence to the contrary based upon equally reliable studies. There may also be a situation in which a new drug has been studied in a limited number of hospitals and clinics and its effectiveness established only to the satisfaction of a few investigators qualified to use it. There may be many physicians who would deny the effectiveness simply on the basis of disbelief growing out of their past experience with other drugs or with the diseases involved.

Thus, even were all of the safety and effectiveness data in the Norgesic new drug application publicly available, neither Norgesic nor Orphengesic would have been shown, by the approval of the Norgesic NDA, to be non-new drugs. Inwood, of course, does not have access to those safety and effectiveness data in the Norgesic new drug application that are not publicly available, 21 CFR 314.14. For a discussion of the reasons why FDA regards such information as nondisclosable, see generally the public information regulations published at 39 FR 44602 (December 24, 1974).

V. Findings

The agency finds that an ANDA is not appropriate for Orphengesic Tablets. The agency further finds that ANDA 85-682, because it is a new drug application that lacks required safety and effectiveness data, may not be approved, 21 U.S.C. 355(d).

The agency finds that Inwood has, by failing to request a hearing, waived its right to a hearing on the proposal to declare Orphengesic Tablets to be a "new drug" within the meaning of 21 U.S.C. 321(p); 21 CFR 314.200(e). Even assuming, *arguendo*, that Inwood's request for a hearing on the proposed refusal to approve ANDA 85-682 is a constructive request for a hearing on the new drug issue, Inwood has waived its right to a hearing be failing to submit data and analysis in accordance with 21 CFR 314.200 (c)(1)(ii), (d), and (e). In any case, that information referred to by Inwood fails to show a genuine and substantial issue of fact that warrants a hearing on that issue.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 505, 701, 52 Stat. 1041-1042 as amended, 1052-1053 as amended by 76 Stat. 781-785, 1055-1056 as amended (21 U.S.C. 321(p), 355, 371)) and under authority delegated to the Commissioner (21 CFR 5.1), the request for a hearing is denied; approval of ANDA 85-682 is refused; and Orphengesic Tablets is declared to be a "new drug" within the meaning of 21 U.S.C. 321(p).

Dated: July 23, 1979.

Sherwin Gardner,

Acting Commissioner of Food and Drugs.

[FR Doc. 79-23498 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-03-M

Peripheral and Central Nervous System Drugs Advisory Committee; Meeting; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The location and the agenda for the Peripheral and Central Nervous System Drugs Advisory Committee meeting announced by notice in the Federal Register of July 17, 1979 (44 FR 41549) has been changed. The meeting will be held in Conference Rooms G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD. The meeting dates remain August 27 and 28, 1979. The open public hearing beginning at 9 a.m. will continue as long as required until all testimony is heard. The open committee session will follow the hearing.

FOR FURTHER INFORMATION CONTACT: Robert C. Nelson, Bureau of Drugs (HFD-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3800.

Dated: July 25, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-23497 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-03-M

National Institutes of Health

Biometry and Epidemiology Contract Review Committee Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, August 20, 1979, Building 31, Conference Room 8, Bethesda, Maryland 20205. The meeting will be open to the public on August 20, from 8:30 a.m. to 9:00 a.m., to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on August 20, from 9:00 a.m. to adjournment, for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie F. Early, Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Wilna A. Woods, Executive Secretary, National Cancer Institute, Westwood Building, Room 821, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7153) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.393, National Institutes of Health)

Dated: July 25, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79-23501 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-08-M

Office of the Secretary

Office of the Inspector General; Delegation of Authority To Issue Subpoenas

Notice is hereby given of delegation by the Inspector General to the Deputy Inspector General, the Assistant Inspector General for Investigations, and the Director of the Division of Special Assignments of the authority vested in the Inspector General by

section 205(a)(3) of Pub. L. 94–505 (42 U.S.C. 3525). Section 205(a)(3) authorizes the Inspector General to subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary to carry out any investigation or other proceeding authorized or directed under Title II of Pub. L. 94–505.

The Inspector General has not limited his authority to issue subpoenas by this delegation nor has he authorized the redelegation of this authority.

The delegation is effective immediately.

Dated: July 20, 1979.

Frederick M. Bohen,

Assistant Secretary for Management and Budget.

[FR Doc. 79-23520 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-12-M

Meeting of the Secretary's Advisory Committee on the Rights and Responsibilities of Women

The Secretary's Advisory Committee on the Rights and Responsibilities of Women, which is established to provide advice to the Secretary of Health, Education, and Welfare on the impact of the policies, programs, and activities of the Department on the status of women will meet on Thursday, August 23, 1979, from 10:00 a.m. to 5:00 p.m., and on Friday, August 24, 1979, from 10:00 a.m. to 3:00 p.m. in Room 723–A, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. The agenda will include issues of concern to the task forces on Health, Family Policy, Title IX, Social Security and Equal Employment.

Further information on the Committee may be obtained from: Ruth Segal, telephone 202–245–8454. These meetings are open to the public.

Date: July 24, 1979.

Jerry Bennett,

Executive Officer, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-23521 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-12-M

Office of Assistant Secretary for Health

President's Council on Physical Fitness and Sports; Cancellation and Rescheduling of Meeting

The meeting that was published in 44 FR, Page 41965, July 18, 1979 to be held on August 2, 1979 from 10:00 a.m.–4:00 p.m. in the New Executive Office Building, 17th & Pennsylvania Avenue, NW., Washington, D.C. is cancelled.

The President's Council on Physical Fitness and Sports (PCPFS) will now hold its quarterly meeting on September 6, 1979 from 10:00 a.m. to 4:00 p.m. in the New Executive Office Building, 17th & Pennsylvania Avenue, NW., Washington, D.C.

The purpose of the meeting is to report on ongoing projects and to discuss future directions of the PCPFS.

A list of Council members and the Exeuctive Order dated September 25, 1970, amended October 25, 1976, establishing their responsibilities, may be obtained from:

C. Carson Conrad, Executive Director, President's Council on Physical Fitness and Sports, Washington, D.C. 20201, Telephone: 202/755–7947.

The meeting will be open to the public.

Dated: July 24, 1979.

C. Carson Conrad,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 79-23522 Filed 7-30-79; 8:45 am]

BILLING CODE 4110-85-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

July 23, 1979.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 54.8(a) notice is hereby given that the Traditional Kickapoo Tribe, c/o Walt Broemer, Texas Indian Commission, 1011 Alston, Livingston, Texas 77351, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian Tribe. The petition was received by the Bureau of Indian Affairs on July 12, 1979. The petition was forwarded and signed by Aurelio Garcia, Tribal Chairman.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be by mail to the petitioner and other interested parties at the appropriate time.

Under § 54.8(d) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files.

The petition may be examined by appointment in the Division of Tribal Government Services, bureau of Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20242.

Rick Lavis,

Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 79-23557 Filed 7-30-79; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[Colorado 0119902-a]

Western Slope Gas Co.; Pipeline Application

July 23, 1979

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Western Slope Gas Company, P.O. Box 840, Denver, Colorado 80201, has applied for rights-of-way for three 4-inch o.d. natural gas distribution pipelines totaling approximately 0.74 linear mile across the following public lands:

Sixth Principal Meridian, Colorado

T. 1 S., R. 101 W.,
Sec. 18, in Rio Blanco County.

The primary purpose for construction of the proposed pipelines is to enable the applicant to convey natural gas from three Chancellor Fork Unit wells in the North Douglas Natural Gas Field to the Rangely and Grand Junction, Colorado, market areas by way of the West Douglas to Rangely and the West Douglas to Grand Junction Natural Gas Transmission Lines.

The purposes of this notice are: to inform the public that the Bureau of Land Management will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved and, if so, under what terms and conditions; to allow interested parties to comment on the application; and to allow any persons asserting a claim to the lands or having bona fide objections to the proposed natural gas pipeline rights-of-way to file their objections in this office. Any person asserting a claim to the lands or having bona fide objections must include evidence that a copy thereof has been served on the applicant. Any comment, claim, or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office,

Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

Andrew W. Heard, Jr.,
Leader, Craig Team, Branch of Adjudication.

[FR Doc. 79-23488 Filed 7-30-79; 8:45 am]
BILLING CODE 4310-84-M

[NM 37669]

New Mexico; Application

July 23, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for two 4½-inch natural gas pipeline rights-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 9 S., R. 30 E.,
Sec. 20, SW¼SE¼;
Sec. 29, E½E½ and NW¼NE¼.

This pipeline will convey natural gas across 1.142 miles of public land in Chaves County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Fred E. Padilla,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-23558 Filed 7-30-79; 8:45 am]
BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Permit; Seaworld of Florida; Receipt of Application

Applicant: Sea World of Florida, 7007 Sea World Dr., Orlando, Florida 32809.

The applicant requests a permit to buy ⅔ Nene (*Branta sandvicensis*) in interstate commerce for propagation.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4514. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: July 25, 1979.

Donald G. Donahoo,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-23565 Filed 7-30-79; 8:45 am]
BILLING CODE 4310-55-M

Endangered Species Permit; Zoological Society of Philadelphia et al.; Receipt of Application

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

Applicant: Zoological Society of Philadelphia, 34th & Girard Ave., Philadelphia, Pennsylvania 19104; PRT 2-4374.

The applicant requests a permit to purchase in interstate commerce two black and white ruffed lemurs *(Lemur variegatus)* from the Duke University Primate Center, Durham, North Carolina for enhancement of propagation.

Applicant: Endangered Species Coordinator, U.S. Fish and Wildlife Service, P.O. Box 50167, Honolulu, Hawaii 96850; PRT 2-4394.

The applicant requests a permit to band, mark, census, observe, and film Laysan teal *(Anas laysanensis)* on Laysan Island for scientific research and enhancement of survival.

Applicant: Jackson Zoological Park, 2918 W. Capitol St., Jackson, Mississippi 39209; PRT 2-4398.

The applicant requests a permit to import in the course of a commercial activity two Bactrian camels *(Camelus bactrianus)* from the Bowmanville Zoo, Ontario, Canada, for enhancement of propagation.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia or by writing to the Director, U.S. Fish and Wildlife Service, WPO, Washington, D.C. 20240.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address.

Dated: July 25, 1979.

Donald G. Donahoo,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-23594 Filed 7-30-79; 8:45 am]
BILLING CODE 4310-55-M

Issuance of Permit for Marine Mammals and Endangered Species

On May 14, 1979, a Notice was published in the Federal Register (44 FR 28115), that an application had been filed with the Fish and Wildlife Service by the California Department of Fish and Game, 1416 Ninth St., Sacramento, California 95814, for an amendment to permit PRT 2-319. This permit would authorize the use of certain drugs for restraining captured sea otters (*Enhydra lutris*), tag pups 12 pounds or larger, use of a small monel ear tag, use tangle nets at night and conduct a simulated transplant experiment to study the effects of translocation on sea otters. No additional taking of sea otters was requested.

Notice is hereby given that on July 11, 1979, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fish and Wildlife Service issued an amendment to permit PRT 2-319, to authorize the activities described above, subject to certain conditions set forth therein.

The amendment is available for public inspection during normal business hours at the Fish and Wildlife Service's office in Room 601, 1000 N. Glebe Road, Arlington, Virginia.

Dated: July 25, 1979.

Donald G. Donahoo,
Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 79-23599 Filed 7-30-79; 8:45 am]
BILLING CODE 4310-55-M

National Fish and Wildlife Laboratory; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a permit to take manatees as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 18), and the Endangered Species Act of 1973 (16 U.S.C. 1531-1539) and the Regulations Governing the Taking of Endangered Species (50 CFR 17).

1. Applicant:

a. Name: Director, National Fish and Wildlife Laboratory.

b. Address: National Museum of Natural History, Washington D.C. 20560.

2. Type of Permit: Scientific research.

3. Name and Number of Animals: Manatee (*Trichechus manatus*). 6

4. Type of Activity: Attach radio transmitters to peduncle of each manatee.

5. Location of Activity: Primarily in Citrus and Levy Counties, Florida, Crystal and Hamassassa Rivers.

6. Period of Activity: Two years beginning 8/1/79 or as soon possible.

The purpose of this application is to learn more about the habits of manatees with the aid of radio transmitters attached to the peduncle of each manatee by means of webbed belts. The transmitters have a lifespan of about six months and will need to be replaced as they quit operating. Attachment will need to be made on urestrained manatees by divers swimming alongside.

Concurrent with the publication of this notice in the Federal Register the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned file number PRT 2-4405. Written data or views, or requests for copies of the complete application or for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the United States Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia 22203.

Dated: July 25, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 79-23597 Filed 7-30-79; 8:45 am]

BILLING CODE 4310-55-M

Threatened Species Permit; Napoleon A. Jesus, et al.; Receipt of Permit Renewal Requests

The permit holders listed below wish to renew their Captive Self-Sustaining Population permits authorizing the purchase and sale in interstate commerce, for the purpose of propagation, the indicated species listed in 50 CFR 17.11 as T(C/P). Humane shipment and care in transit is assured.

These permit files and supporting documents are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, USFWS, WPO, Washington, D.C. 20240. Interested persons may comment on these applications on or before August 30, 1979 by submitting written data, views, or arguments to the Director at the above address.

Applicant: Napoleon A. Jesus, 43 Tihonet Rd., Wareham, Massachusetts 02571; PRT 2-937. Species: all T(C/P) pheasants.

Applicant: San Diego Zoological Garden, P.O. Box 551, San Diego, California 92112; PRT 2-513. Species: all T(C/P) mammals.

Please refer to the individual applicant and the appropriately assigned PRT 2-number when submitting comments.

Dated: July 25, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 79-23596 Filed 7-30-79; 8:45 am]

BILLING CODE 4310-55-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before July 20, 1979. Pursuant to section 60.13 of 36 CFR Part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, DC 20243. Written comments or a request for additional time to prepare comments should be submitted on or before August 10, 1979.

Charles A Herrington,

Acting Keeper of the National Register.

CONNECTICUT

New London County

Groton, *Eastern Point Historic District,* irregular pattern along Eastern Point Rd.

HAWAII

Kauai County

Puhi, *Grove Farm Company Locomotives,* off HI 50.

Maui County

Kalae, *Meyer, R. W., Sugar Mill,* HI 47.

ILLINOIS

Cook County

Chicago, *Villa Historic District,* roughly bounded by Avondale, W. Addison, N. 40th, and N. Hamlin Aves.

INDIANA

Marion County

Indianapolis, *Johnson-Denny House,* 4430 N. Park Ave.

Tippecanoe County

Lafayette, *Perrin Historic District,* roughly bounded by Murdock Park, Sheridan Rd., Columbia, Main and Union Sts.

KENTUCKY

Fayette County

Athens, *Athens Historic District,* Athens-Boonesboro Pike.

Lexington, *Price, Pugh, House,* 2245 Liberty Rd.

Lexington, *Price, Williamson, House,* 2497 Liberty Rd.

Jefferson County

Anchorage vicinity, *Dorsey-O'Bannon-Hebel House,* E of Anchorage at 13204 Factory Lane.

Louisville, *Meek-Miller House,* 3123 N. Western Pkwy.

MARYLAND

Harford County

Aberdeen vicinity, *Winsted,* N of Aberdeen at 3844 W. Chapel Rd.

MONTANA

Custer County

Miles City vicinity, *Waterworks Building and Pumping Plant Park,* W of Miles City on Pumping Plant Rd.

NEVADA

Douglas County

Glenbrook, *Lake Shore House,* Glenbrook Rd.

NEW HAMPSHIRE

Rockingham County

Portsmouth, *New Hampshire Bank Building,* 22-26 Market Sq.

NEW YORK

Genesee County

LeRoy, *Keeney House*, 13 W. Main St.

NORTH DAKOTA

Cass County

Fargo, *Grand Lodge of North Dakota, Ancient Order of United Workmen*, 112–114 N. Roberts St.

OHIO

Champaign County

Urbana, *Urbana College Historic Buildings*, College Way.

Cuyahoga County

Bratenahl, *Pickands, Jay M., House*, 9619 Lake Shore Blvd.
Brookpark vicinity, *Danalds, Samuel, House*, 6511 Ruple Rd.
Cleveland, *Wheatley, Phillis, Association*, 4450 Cedar Ave.
Lakewood, *Nicholson, James, House*, 13335 Detroit Ave.

Erie County

Vermilion, *Francis, Joseph, Iron Surf Boat*, 480 Main St.

Franklin County

Columbus, *Higgins, H. A., Building (Flatiron building)* 129 E. Naghten St.

Geauga County

Burton, *Domestic Arts Hall and Flower Hall*, Geauga County Fairgrounds.

Greene County

Xenia, *East Second Street District*, 184–271 E. 2nd St.

Jefferson County

Steubenville, *Ohio Valley Clay Company*, Washington and Water Sts.

Lake County

Wickliffe, *Coulby, Harry, Mansion*, 28730 Ridge Rd.

Logan County

Bellefontaine, *Lawrence, William, House*, 325 N. Main St.

Montgomery County

Dayton, *Pretzinger, Rudolph, House*, 908 S. Main St.

Muskingum County

Frazeysburg vicinity, *Baughman Memorial Park*, W of Frazeysburg on OH 586.
Zanesville, *Tannehill, Capt. James Boggs, House*, 367 Taylor St.
Zanesville vicinity, *Tanner, William C., House*, NW of Zanesville.

Perry County

Thornville vicinity, *Whitmer, Soloman, House*, N of Thornville at 13917 Zion Township Rd., NW.

Scioto County

Portsmouth, *St. Mary's Roman Catholic Church*, 5th and Market Sts.

Wood County

Rossford, *Indian Hills Site.*

PENNSYLVANIA

Philadelphia County

Philadelphia, *Walnut-Chancellor Historic District*, roughly bounded by 20th, 21st, Walnut and Locust Sts.

TEXAS

Bowie County

Texarkana, *Hotel McCartney*, State Line Ave.

Fayette County

Schulenburg, *Schulenburg Cotton Compress*, James and Main Sts.

Floyd County

Floydada vicinity, *Floydada Country Club site*, 7 mi. S of Floydada off U.S. 62.

Nueces County

Port Aransas, *Tarpon Inn*, 200 E. Cotter St.

WASHINGTON

Pacific County

Ocean Park, *Wreckage, The*, 256th Pl.

[FR Doc. 79-23166 Filed 7-30-79; 8:45 am]

BILLING CODE 4310-03-M

Office of the Secretary

Outer Continental Shelf Advisory Board Policy Committee; Notice and Agenda for Meeting

This notice is issued in accordance with the provision of the Federal Advisory Committee Act, Pub. L. 92–643, 5 U.S.C. App. I and the Office of Management and Budget's Circular No. A–63, Revised.

The policy Committee of the Outer Continental Shelf Advisory Board will meet during the period 8:30 a.m. to 4:30 p.m., August 29, 1979, and 9:00 a.m. to 12:00, August 30, 1979, at the Holiday Inn-Downtown, 88 Spring Street, Portland, Maine.

The meeting will cover the following principal subjects:

August 29, 1979

(1) Status of OCSLAA Implementation.
(a) Proposed 5-Year OCS Leasing Program.
(b) Regulations Update.
(c) OCS Participation Grants.
(d) Fishermen's Contingency Fund.
(e) Environmental Studies Program.
(f) Coast Guard Activities.
(2) Federal Consistency: Status and Issues.
(3) OCS Lease. Sales Update.
(a) Sale 48 (California).
(b) Sale 42 (Georges Bank).
(4) New England OCS Studies.

August 30, 1979.

(1) Superfund Legislation.
(2) Deep Water Technology.

The meeting is open to the public. Interested persons may make oral or written presentations to the Committee. Such requests should be made no later than August 20 to: Alan D. Powers, Office of OCS Program Coordination, Department of the Interior—Room 5150, Washington, D.C. 20240 (202/343–9311).

Requests to make oral statements should be accompanied by a summary of the stateemnt to be made.

Minutes of the meeting will be available for public inspection and copying eight weeks after the meeting at the Office of OCS Program Coordination, Room 5150, Department of the Interior, 18th & C Streets, N.W., Washington, D.C.

Dated July 26, 1979.

Alan D. Powers,

Director, Office of OCS, Program Coordination.

[FR Doc. 79-23431 Filed 7-30-79; 8:45 am]

BILLING CODE 4310-01-M

Outer Continental Shelf Advisory Board Policy Committee, Gulf Region; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act. Pub. L. No. 92–643, 5 U.S.C. App. I and the Office of Management and Budget's Circular No. A–63, Revised.

The Gulf Regional Policy Committee will meet on August 17, 1979, from 9:00 a.m. to 2:00 p.m. in Suite 841, 500 Camp Street, Hale Boggs Federal Building, New Orleans, Louisiana.

The meeting will cover the following principal subjects:

(1) 5-Year OCS Leasing Program
(2) Status of OCSLAA Regulations
(3) Status of New OCS Advisory Board Committees
(4) Regional Oil Spill Response Plan
(5) Gulf of Mexico Environmental Studies Program
(6) Status of Recent Sale Activities

The meeting is open to the public. Interested persons may make oral or written presentations to the Board. Such requests should be made by August 13, 1979, to the Chairman: Thomas Joiner, State Geological Survey, P.O. Drawer O, University, Alabama 35486, (205/349–2852).

Minutes of the meeting will be available for public inspection and copying 8 weeks after the meeting at the Office of OCS Program Coordination, Room 5150, Department of the Interior, 18th & C Streets, N.W., Washington, D.C.

Dated July 26, 1979.
Alan D. Powers,
Director, Office of OCS Program Coordination.
[FR Doc. 79-33492 Filed 7-30-79; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF LABOR

Employment and Training Administration

[Field Memorandum 284-79]

Guidelines for Review of Planned Performance in Comprehensive Employment and Training Services

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: In order to provide a common framework of national and regional experience against which to compare performance goals and to identify potential problems with program design and delivery, the Department of Labor has developed guidelines to review prime sponsors' planned performance for Fiscal Year 1980 under Title II, Parts B and C, of the Comprehensive Employment and Training Act (CETA).

The entire text of Field Memorandum 284-79, which was issued on May 15, 1979, is published here to inform all interested parties of the Department's review procedures.

FOR FURTHER INFORMATION CONTACT: Robert N. Colombo, Patrick Henry Building, 601 D Street, N.W., Room 5006, Washington, D.C. 20213, telephone: (202) 376-6560.

CETA
TDCR
May 15, 1979
Field Memorandum No.
All Regional Administrators
Don A. Balcer
Acting Administrator
Field Operations

CETA Title II-B/C Review Guidelines for Fiscal Year 1980

1. *Purpose.* To transmit guidelines for the review of the CETA Title II-B/C Annual Plan Subpart for Fiscal Year 1980.

2. *References.* FM 209-77; FM 390-78.

3. *Background.* Grant review guidelines were implemented for the first time to review FY '77 CETA title I grant applications. There was some criticism of this initial effort, mainly concerning the technical adequacy of the indicators themselves and the fact that participation in the development of the indicators was limited. In response to this, a work group, consisting of one prime sponsor representative from each Region and one representative from each Regional Office, was created to identify the best indicators to measure performance and to define methods of computation, given the constraints of the existing data system. The group produced a final document (FM 209-77) setting forth 13 performance indicators, grouped into four clusters and related interpretive factors. The cluster approach was used since CETA represents a multiplicity of goals and objectives for which no single performance indicator can adequately measure the effectiveness of a local program.

A subgroup consisting of three prime sponsor representatives, three Regional Office representatives, and two National Office representatives analyzed Fiscal Year 1976 data and developed a mechanism to assist in the review of Fiscal Year 1978 Annual Plans. The resulting grant review guidelines included three of the original four clusters. The earnings cluster was incorporated into the interpretive factors section of the grant review guidelines because there is no formal mechanism in the planning process that considers planned earnings outcomes. For review of Fiscal Year 1980 Title II-B/C plans, the three clusters previously utilized in reviews have been reduced by one cluster. In addition, an indicator was dropped from one cluster.

Review guidelines were not developed for PSE programs in previous years because of data problems and the difficulty of applying outcome oriented indicators to these programs. With reauthorization and changed program emphasis, review guidelines would now be more appropriate in the review of PSE programs. Guidelines for review of Title II-D and Title VI Annual Plan Subparts are now under study. If such guidelines are issued, they will not be used for reviewing plans for October 1 approval. Prime sponsors will be provided sufficient time to make any requisite adjustments in their plans.

4. *Changes for 1980.* In preparation for review of Fiscal Year 1980 Annual Plans, a small group of Regional Office personnel met to consider review guidelines appropriate for Fiscal Year 1980. The following changes resulted from the meetings:

a. Elimination of the indicator "entered employment as a percent of total positive terminations" from the termination cluster, since this is an internal program measure which complicates review of the termination cluster unnecessarily.

b. Elimination of the fund utilization cluster from the review. The administrative cost rate in this cluster was dropped, since prime sponsors now pool costs in the Administrative Subpart of their Annual Plan. Also, the carryout rate was dropped and a revised indicator will be issued for future reviews.

c. The designation nondirect placement used for indicators in the termination and cost clusters has been changed to indirect placement to conform to the new PPS and PSS for Fiscal Year 1980. Comparable data for the previous year will be designated as nondirect placement to include indirect placement and obtained employment.

d. Transfers to other titles and subparts were eliminated from total terminations for the termination cluster indicators "entered employment as a percent of total terminations" and "indirect placement as a percent of total terminations."

e. Provision of more complete labor market and program activity data which prime sponsors may find useful for planning. These are included in the Appendix.

5. *Responsibilities.* It will be the responsibility of the Federal Representative to fill out the worksheets and determine when an explanation will be required from a prime sponsor. The prime sponsor will have the responsibility to provide explanations when required.

It was the specific intent of the work group that explanations should be based on *clusters* rather than individual indicators. That is, if only one or two indicators within a cluster fall into the area requiring explanation by a small amount, no explanation may be required, especially if the other indicators are well inside the two-thirds requiring no explanation. Only good judgment by the Federal Representative in determining which clusters need explanation can maintain flexibility and prevent needless red tape and delays.

Thoughout this memorandum the Federal Representative is designated as the reviewer of the prime sponsor's Annual Plan. However, some Regions may prefer to use committees or other processes in the review. This is the prerogative of the Regional Administrator (RA), and although the term Federal Representative will be designated, it is not intended to limit the Regional Administrators in their choice of review staff.

6. *Objectives and Mechanism of Review Guidelines.* The primary objective of such a tool is to provide a common framework against which

prime sponsors and Regional Offices can compare Fiscal Year 1980 Annual Plans and performance goals to actual national and regional experience.

Data for each indicator are displayed by reference points of lowest and highest performance and low and high thirds on both a national and regional level. Planned performance in relationship to the regional low or high third will be emphasized in the plan review. Each indicator cluster will include a list of factors the presence or absence of which may affect performance. Such a list is not intended to be all inclusive nor is it intended to substitute for the knowledge of a Federal Representative and prime sponsor staff about the appropriateness of a plan. The data are intended to provide a good starting point from which to identify potential problems with program design and delivery *before* they are reflected in poor performance. The review guidelines are *not* to be considered as *performance standards.* Performance standards for the reauthorized CETA, as provided in the legislation, are being studied for application to reviews of future Annual Plans. The reference points of regional and national experience serve only as convenient benchmarks against which prime sponsors' plans can be reviewed and analyzed, and to identify where further explanation would help the RA to understand local goals and where additional technical assistance may be needed.

Some users may wish to understand the distribution of performance more precisely than thirds are able to show. For these users, optional scattergrams plotting each prime sponsor, by Region, have been provided in Attachment II, for the termination cluster indicators only. Attachment III–B will provide a comparable distribution by Region for the cost indicators, but in a different format. To aid in comparison, the scattergrams have been divided into the same thirds as shown on the guideline worksheets.

7. *Indicators.* The indicators to be used as the basis for the review of Fiscal Year 1980 Title II–B/C Annual Plan Subparts are those developed by the Performance Indicators Work Group and issued in FM 209–77, as subsequently revised. Several indicators have been excluded from previous reviews. These are in the earnings cluster for which no information is generally available in the planning documents, the expenditure rate in the fund utilization cluster, because it is the complement of the carryout rate, now excluded in these review guidelines. In addition to the carryout rate, other indicators excluded for this review are the entered employment as a percent of total positive terminations and the administrative cost rate.

The following indicators are included:

a. *Termination Cluster*

(1) POSITIVE TERMINATION RATE:

$$\frac{\text{Total Positive Terminations}}{\text{Total Terminations}} \times 100$$

(2) ENTERED EMPLOYMENT RATE, AS PERCENT OF TOTAL TERMINATIONS (less transfers to other titles or subparts):

$$\frac{\text{Entered Employment}}{\text{Total Terminations-Transfers to Other Titles or Subparts}} \times 100$$

(3) INDIRECT PLACEMENT RATE, AS A PERCENT OF TOTAL TERMINATIONS (less transfers to other titles or subparts):

$$\frac{\text{Indirect Placements}}{\text{Total Terminations-Transfers to Other Titles or Subparts}} \times 100$$

(4) INDIRECT PLACEMENT RATE, AS A PERCENT OF ENTERED EMPLOYMENT:

$$\frac{\text{Indirect Placements}}{\text{Entered Employment}} \times 100$$

b. *Cost Cluster,* where Total Accrued Expenditures refer to prime sponsor CETA funds, excluding administrative expenditures.

(1) COST PER POSITIVE TERMINATION:

$$\frac{\text{Total Accrued Expenditures (excluding administrative expenditures)}}{\text{Positive Terminations}}$$

(2) COST PER ENTERED EMPLOYMENT:

$$\frac{\text{Total Accrued Expenditures (excluding administrative expenditures)}}{\text{Entered Employment}}$$

(3) COST PER INDIRECT PLACEMENT:

$$\frac{\text{Total Accrued Expenditures (excluding administrative expenditures)}}{\text{Indirect Placements}}$$

8. *Description of Data.*

a. *Data Base.* Data covering Fiscal Year 1978 for 444 prime sponsors were used to compute the 7 indicators and to determine national and regional thirds against which the prime sponsor's planned performance will be compared. The data were obtained from the CETA Program Status Summary (PSS), Financial Status Report (FSR) and obligations contained in the Grant Signature Sheet and modifications. Data from these documents are received in the National Office through the Regional Automated System (RAS). The RAS data were, in turn, processed by Statistical Package for the Social Sciences (SPSS) which provided most of the computations. The data were taken from RAS as of mid-March 1979. The data are not perfect; about 1 percent of it was not useful. Attachment III–B. provides the raw data, reported by prime sponsors, from which the indicators are calculated.

b. *Computation of Thirds.* The performance of each prime sponsor was computed for each of the 7 indicators. The results, expressed as a percentage or dollar cost, were then arrayed in ascending order from the lowest computed value to the highest. This array was divided into three equal parts, each part containing the performance of 33⅓ percent of all prime sponsors.

c. *Interpretive Factors.* Data for interpretive factors preprinted on the Interpretive Factor Worksheet (see Attachment I) include selected client characteristics, pre-CETA and post-CETA median wages, percent of cumulative enrollment by activity, percent of accrued expenditures by activity, the local unemployment rate and length of stay in months for the total program and selected activities. Data, except for the local unemployment rate, were obtained from the PSS for enrollment, the FSR for accrued expenditures and the Quarterly Summary of Participant Characteristics (QSPC) for characteristics and wage data. The unemployment rate for Fiscal Year 1977 is also provided for prime sponsors in the interpretive factor worksheet and in Attachment III–C to note trends. Prime sponsor Fiscal Year 1980 plan data will be compared against the national and regional totals from the RAS for mid-March 1979. For comparison, the Federal Representative should fill in the appropriate data in the interpretive factor worksheet for the prime sponsor under review to explain program performance. Two columns are provided for prime sponsors. In the first column the Federal Representative will include planned Fiscal Year 1980 data, where available. If planning data for characteristics and wages can be extracted from the narrative or the significant segments portion of the PPS, it should be included. In the second prime sponsor column, the Federal Representative should copy Fiscal Year 1978 performance data. Instructions for completing "sponsor" columns are in Attachment I.

(9) *Application of Review Guidelines.* There are separate worksheets for each of the indicator clusters and worksheets for the interpretive factors to be utilized in the review. See Attachment I for an

explanation of the four reference points (the high, the low, and the first and second thirds) and instructions for the use of the worksheets.

In reviewing prime sponsor planning goals, the following procedures should apply:

a. *Computation of Planning Goals.* The Federal Representative should first compute the Fiscal Year 1980 performance goals for each of the indicators in the three performance clusters by substituting cumulative planning data *through the fourth quarter* from the PPS and BIS of the Fiscal Year 1980 Annual Plan for the data elements of the formulas in the worksheets. The computed values should be placed in the "Planned for Fiscal Year 1980" column of the worksheets.

b. *Comparison to Regional Thirds.* Planned performance in relation to the *regional* thirds will be emphasized in the review process for each indicator in the performance clusters to determine if local planning goals require an explanation. The national reference points provide additional reference points. Use of regional comparative data as the reference points against which prime sponsor plans are to be compared takes into account programmatic, labor market, and other factors unique to a particular Region, thereby ensuring equitable treatment for as many prime sponsors as possible.

c. *Planned Performance Requiring Explanation.* In general, planned performance that is (1) not less than the prior year's performance, and (2) in the acceptable two-thirds need not be explained. Prior or previous year's performance shall mean Fiscal Year 1978. Planned performance falling *above* the Region's lowest third for the "termination cluster" and *below* the Region's highest third for the "cost cluster" will not normally need explanation. Higher positive outcome rates and lower costs for positive outcomes generally indicate desirable performance and should not require explanation unless there are programmatic or other reasons for doing so.

RA's may, in addition, request an explanation of planned performance in the two-thirds which normally requires no explanation when the reviewer believes the planning goals are unrealistic or serious programmatic problems are evident. This may include planned performance which differs substantially from previous performance without a significant change occurring in program operations, or planned performance which may not be achievable because of serious administrative, managerial or fiscal problems. The RA may determine appropriate situations and the amount of detail required for any explanation.

Explanations must be as *complete* as possible. They should take into account the absence or presence of labor market, programmatic and other locally relevant situations which may influence performance. These factors will be discussed in item 10 of this FM. To the extent that an explanation relates to a local *problem* (such as a management problem) under the control of the prime sponsor, it should include a brief discussion of the steps being taken to correct the problem. (Note that an indicator in the low or high third may result from program mix or labor market conditions and may not reflect a "problem.")

d. *Incremental Improvement.* In evaluating plans for Fiscal Year 1980, an additional key element to be considered is each sponsor's previous performance. The concept of incremental improvement is critical to reviewing a sponsor's plan. To determine the extent of improvement over previous performance, Federal Representatives should compute (or copy from the lists provided) the sponsor's actual achievement for each of the indicators, using the Fiscal Year 1978 data. The results should be placed in the column headed "Actual Fiscal Year 1978" of the Performance Indicator Worksheets. If planned performance continues to be in the third requiring explanation, but reasonable improvement over previous performance is planned, such improvement may serve as adequate explanation. The knowledge and *judgment* of the reviewer must play a large role in these situations, particularly where the prime sponsor has a history of achieving below plan. A prime sponsor, even though planning to perform in the two-thirds of all clusters requiring no explanation, should not plan lower performance than it achieved the prior year without explaining why unless there has been a drastic change in local conditions or new legal requirements drastically alter program or participants to be served. Although all sponsors may be expected to improve their performance, reviewers must use judgment; improvement—like growth—has limits.

e. *Use of Current Data.* The structure of the grant review guidelines has made no formal provison for using current, mid-year data, because mid-year data are not always comparable to end-of-year data. However, if questions arise concerning the need to explain, or the adequacy of the explanation provided, the most recent data available should be taken into account. Current data should be especially helpful in helping to decide questions concerning incremental improvement.

10. *Interpretive Descriptions and Interpretive Factors.* Each performance cluster worksheet (see Attachment I to this FM) contains a preprinted list of programmatic and environmental factors which may be of assistance in explaining, or raising questions about prime sponser planned performance. The list, located in the lower left side of each worksheet, is *not* intended to be all inclusive. The Federal Representative may be aware of other factors unique to the Region or prime sponsor area that could explain planned performance. Among the influential factors (whether or not listed) are those dealing with the prime sponsor's program mix, enrollee characteristics, enrollee pre-CETA and post-CETA wages, the local unemployment rate and length of stay in the program.

These factors are all quantifiable and are designated as *interpretive factors.* They are contained on a separate worksheet in Attachment I for convenience of comparing these factors and using them in combination to explain planned performance. Since these factors, except for enrollee wages, the local unemployment rate and length of stay, can be broken down by their proportion of the prime sponsor's total program, each factor can be compared with other elements of the sponsor's program and regional experience data.

The interpretive factors worksheet will contain regional and national experience data for Fiscal Year 1978 which has been preprinted on the worksheets. Prime sponsor data to be compared within the program and with regional totals will be filled in by the Federal Representative in the blank columns (see Attachment I, section II, for additional instructions).

Page 6 of Attachment I contains a short description of the use of each of the interpretive factor groups. The description is limited but should help the Federal Representative to understand how the various interpretive factors may be used. The following examples provide the Federal Representative with a fuller range of implications that these factors may have on planned performance:

a. *Participant Characteristics.* The Federal Representative should pay particular attention to the types of participants to be enrolled in the program and the possible correlations to the percent of expenditures, cumulative enrollments by program activity,

planned performance goals, and program objectives. Prime sponsors may develop and operate programs designed to increase the employability of particular groups of enrollees, with placement in unsubsidized employment not being a program objective. A prime sponsor proposing to serve a significant number of youth and full-time students may be expected to allocate a sizeable portion of funds for work experience activities and have a sizeable percentage of enrollments in work experience activities, accompanied by a relatively low planned "entered employment rate," a relatively high planned "cost per entered employment," and a relatively high planned "positive termination rate." The Federal Representative should then compare planned performance goals for the affected indicators against regional comparative data for the interpretive factors. This comparison should help to assess planned performance.

Prime sponsors operating programs or activities stressing service to other "hard-to-place" groups, e.g., minorities, persons with limited English-speaking ability, older workers and handicapped, may reasonably be expected to propose relatively low positive termination rates through frequent turnover, low entered employment rates, high costs per positive termination and high costs per entered employment.

b. *Program Mix.* Prime sponsors may plan to allocate a sizeable portion of funds to classroom training and OJT. These are placement-related activities and planned performance should reflect this, unless the classroom training includes much remedial education. Planned goals for other indicators may be similarly affected by such a distribution of funds. The Federal Representative should review regional data for the affected indicators and the interpretive factors for possible explanation of the sponsor's planned performance.

The interpretive factors and other environmental and programmatic influences must be used with care. Although there may be an established correlation (See Page 6 of Attachment I.) among some of these with the planning goals, there are many non-measurable factors which can completely outweigh the correlations, many of which are weak. Initial multiple regression equations show that the 10 best factors were "able to explain" an average of about 40 percent of the variation between prime sponsors for the performance indicators. This means that the majority (about 60 percent) of the variation in prime sponsor performance is not predictable by the data available. It will be incumbent on the Federal Representative, who is knowledgeable concerning the environmental and programmatic aspects of the prime sponsor, to make *judgments* as to the factors and the strength of the factors considered to be operating to determine if they are adequate to explain planned performance.

11. *Training.*

a. *Federal Staff.* In order to insure a uniform understanding of how to apply the guidelines in your Region, it is recommended that regional staff be trained *as early as possible.* Regional Offices may request training from the National Office. Arrangements will be made for national staff to assist in training in the Regions.

12. *Action Required.* RAs should distribute this FM as soon as possible to regional staff, prime sponsors and any other person requiring this information. They should also inform prime sponsors and others that these guidelines will be published in the Federal Register.

13. *Inquiries.* Questions should be directed to Robert Colombo on 8-376-6560, Henry Rosenbloom on 8-376-6580 or Nan Beckley on 8-376-6575.

14. *Attachments.*

I. Worksheets and Instructions (RAs only)

II. Performance Indicator Scattergrams for Termination Cluster

III. Prime sponsor lists by Region, of performance indicators based on Fiscal Year 1978 performance [RAs are authorized to substitute RAS data where it is more current or convenient.) Also included are selected labor market area data. (RAs only)

Note.—For presentation in the Federal Register, only Attachments I and II of this field memorandum will be reproduced. However, performance data for the termination cluster indicators contained in Attachment III, which will not be reproduced, are also contained in the scattergrams of Attachment II, although prime sponsors are not identified.

Attachment I to FM No. 284-79

Worksheets

I. *Performance Cluster Worksheets.* Separate worksheets have been developed for each of the indicator clusters which include a list of interpretive environmental and programmatic factors to be used in plan reviews. The following will describe the format of the cluster worksheets and general procedure for review.

A. The *upper part of each worksheet* lists the component parts of the cluster, the computation formula, and a space for entering planned outcomes for the prime sponsor being reviewed. Next to the planned result insert the prime sponsor's actual performance during the prior year (Fiscal Year 1978). Comparative data, to be used as reference points in either percents or dollars, are preprinted. The comparative data will be displayed for both *national* and for *individual regions.* Four reference points are included:

1. Lowest performance in the region/Nation (low)

2. First third in the region/Nation (33 percent)

3. Second third in the region/Nation (67 percent)

4. Highest performance in the region/Nation (high)

The low third refers to the point where 33⅓ percent of the prime sponsors fall *below* in performance.

The high third refers to the point in performance which 33⅓ percent of the sponsors fall *above.*

The middle third includes scores between the 33⅓ percent value and the 66⅔ percent value.

B. The *bottom left hand side of the worksheets* contains a list of interpretive descriptions. These environmental and programmatic factors may influence performance and may be used as a basis for explaining deviations of planning goals. The list is *not* all-inclusive; Federal Representatives should be aware of other factors unique to the Region or sponsor. In any event, it will be incumbent upon the Federal Representative (working with the prime sponsors) to document the absence or presence of influential factors. Important factors that can be helpful in explaining planned performance are those dealing with program mix, enrollee characteristics, pre-CETA and post-CETA wages, the local unemployment rate and length of stay data. These *interpretive factors* are listed on separate worksheets of the review guideline package. These worksheets will be discussed in section II of this Attachment.

C. The *bottom right hand side of the worksheets* provides space for explanation of planned performance. Explanation is required as described in 9.c. of this FM.

II. *Interpretive Factors.* Additional worksheet, assisting Federal Representatives in displaying performance in terms of various *interpretive factors,* is contained in the worksheet package. These factors should be used in conjunction with the influential factors listed on the indicator cluster worksheets as a basis to explain prime sponsor performance. The

interpretive factors include categories of program mix, selected enrollee characteristics, pre-CETA and post-CETA wages, local unemployment rates and length of stay data. Page 6 of this Attachment contains a short description on the use of each section of the interpretive factors.

The worksheet contains four columns of data. In the first column, the Federal Representative should insert the planned data for the grant year being reviewed, as available. In the second column, the Federal Representative should insert the prime sponsor's performance for the previous year. In the final two columns corresponding regional and national data have been preprinted. The prime sponsor data should be filled in as follows:

A. Prime Sponsor Planning Data

1. *Program Mix—Percent of Expenditures by Program Activity (excluding funds contributed to the administrative cost pool).* Obtain data from section F. of the BIS of the Fiscal Year 1980 Annual Plan. Cumulative *fourth quarter* expenditure data for each applicable activity for F.2.a., b., d., e. and f. should be divided by cumulative fourth quarter total expenditures by program, F.2. The result should be *multiplied by 100* and placed in the "sponsor" column beside the appropriate activity.

2. *Program Mix—Percent of Cumulative Enrollment by Program Activity.* First determine combined cumulative *fourth quarter* enrollment in each program activity listed in section III of the PPS from A. through E. then divide the fourth quarter cumulative enrollment for *each* of the program activities (or combined activities in the case of total classroom training or total work experience) by the combined cumulative enrollment, multiply by 100 to give the percent and record in the appropriate space. Example: Percent enrollment in total classroom training which inlcudes occupational skills and other classroom training—

$$\frac{\text{PPS (4th Q)(a): III.A. + III.B.}}{\text{PPS (4th Q)(a): III.A. + III.B. + III. C. + III.D. + III.E.}} \times 100$$

3. *Enrollee Characteristics.* Planned enrollment by age, sex, and race is available on the Title II–B/C PPS. Enrollment for the other characteristics may not be routinely planned, so it is not necessary to insert planning data where none exists. However, if the prime sponsor plans for target groups of the population that exactly correspond to any of the listed categories, the planning data should be inserted. Leave blank all categories for which there is no data; it will be assumed that last year's performance will be repeated. Considerable judgment must be exercised by Federal Representatives in interpreting the impact of these factors and their changes over time.

4. *Median Wages, Unemployment Rates.* As with planned enrollee characteristics, this data should be inlcuded only if there is documentation in the grant narrative that exactly corresponds. In the great majority of cases, these spaces should be left blank.

5. *Length of Stay.* See the following section B., paragraph 6. for discussion and computation of length of stay. Formula 1 in the discussion will be used to compute average length of stay for the total program. To compute planned length of stay for the total program, current enrollment and terminations for the fourth quarter should be obtained from section I. of the PPS. Data should be substituted in the formula, using elapsed time as 12 months, and computed. To compute length of stay for activities, use Formula 2. For the Fiscal Year 1980 review, total class room training and total work experience will be computed for comparison with Fiscal Year 1978 regional and national averages. As an example, to obtain planned length of stay for total classroom training, fourth quarter current enrollment in section III.b. should be added for A. classroom training (occupational skills) and B. classroom training (other). This should be divided by the total cumulative enrollment for the fourth quarter A. and B. found in column a. minus total current enrollment for A. and B. found in column b. The result should be multiplied by 12. The following will indicate the computation using data elements that are substituted in the formula:

LOS (Total Classroom Training)=

$$\frac{\text{PPS (4th Q)(b): III.A. + III.B.}}{\text{PPS (4th Q)(a): III.A. + III.B. – PPS (4th Q)(b): III.A. + III.B.}} \times 12$$

B. Prime Sponsor Previous Performance

Performance data as of fourth quarter Fiscal Year 1978 should be inserted as appropriate. Federal Representatives may use two sources for the data: the prime sponsor's Quarterly Reports, or the RAS reports which were generated from the original Quarterly Reports.

1. *Program Mix—Percentage of Expenditures by Program Activity. Use column B of the FSR for fourth quarter Fiscal Year 1978 to determine percentages. For example, percent of expenditures for classroom training.*

$$\frac{\text{FSR 7.B.1}}{\text{FSR 7.B.7}} \times 100$$

2. *Program Mix—Percentage of Cumulative Enrollment by Program Activity.* Use section II of PSS for Fiscal Year 1978. First determine fourth quarter enrollment by adding the cumulative (total) fourth quarter enrollment in each program activity listed in section II of the PSS *except* classroom training, vocational education (vocational education enrollment is excluded because the data are too variable to be a useful indicator, and was often reported under classroom training prime sponsor). Then divide the fourth quarter cumulative enrollment for *each* of the program activities by the combined cumulative enrollment. Multiply by 100 to give the percent and record in the appropriate space. Example: Percent of enrollment in classroom training=

$$\frac{\text{PSS II.A. (4th Q)(a)}}{\text{PSS II (4th Q)(a): II.A. + II.C. + II.D. + II.E.}} \times 100$$

3. *Enrollee Characteristics.* Compute percentages from the Fiscal Year 1978 fourth quarter QSPC or RAS printouts. Use data for total participants (column B of the QSPC).

4. *Median Wages.* Median wages have been estimated using standard methods for grouped data. (See a *Forms Preparation Handbook,* May *1974.)* Originally, all wage categories were included, but it was discovered that for some prime sponsors a majority of their placements had no previous wage. This caused the pre-CETA median wage to

be zero and the resultant increase in median wage was unrealistically high. The problem was resolved by excluding those without previous wages from the computation. However, eliminating those without previous wages skews actual performance in the other direction. Recognizing the merits of both positions, and that more complete data should be helpful in explaining peformance, both computations have been made. Wherever the pre-CETA median wage would be zero, the percentage of participants with no previous wage is printed. The "official" pre-CETA median wage excludes those with no previous earnings and is the preferred interpretive factor to explain performance related to wage increases. However, the other pre-CETA median wage may be included in explanations where it adds meaning. The "official" figure is contained on the prime sponsor lists under the column headed "Pre-CETA, w/o O's." It is followed by the figure including zero pre-CETA wages. Post-CETA median wages are not affected by either choice.

5. *Unemployment Rates.* Unemployment rate data are averages for 1977 and 1978. The regional and national unemployment rates shown on the Interpretive Factors Worksheets were aggregated from the prime sponsor data. The displayed rates should be compared with unemployment rates of recent periods noting trends that may assist in explaining differences.

6. *Length of Stay.* Average length of stay data by prime sponsor for the total program and selected activities should be obtained from Attachment III–A, Columns 11, 12 and 13. In some cases, length of stay data were extreme and were rejected. This will be indicated by a legend at the end of the attachment. The following will indicate how the length of stay was computed and will include further details on this subject: Assuming a steady-state program for each prime sponsor, it is possible to compute a length of stay for the total program, each program activity, and each participant characteristic. The general formula is:

$$\text{Formula 1 LOS} = \frac{\text{current enrollment}}{\text{cumulative terminations}} \times \text{elapsed time}$$

Since months are a convenient unit to measure length of stay, and data are for the end of the year, elapsed time was chosen as 12 months. The general formula was used to compute total length of stay. A variation was used to compute length of stay by program activity:

$$\text{Formula 2 LOS (P.A.)} = \frac{\text{current enrollment}}{\text{cumulative enrollment—current enrollment}} \times 12 \text{ months}$$

Although no computations have been made for participant characteristics, a third variation can compute length of stay for each participant group:

$$\text{Formula 3 LOS (Char.)} = \frac{\text{cumulative enrollment—terminations}}{\text{terminations}} \times 12 \text{ months}$$

Prime sponsors may find an analysis of length of stay by participant group very informative, since it focuses more attention on current activity, which is usually a better measure of the resources being devoted to any participant group than cumulative enrollment.

Prime sponsors wishing to pursue length of stay analysis further will find that the measure can be improved by averaging current enrollment over time.

Use of Interpretive Factors—General Observations

1. *Program Mix.* The size of a youth work experience program explains more of the variation in placement rates and "costs per" than any other single set of factors. Youth work experience programs generally lower placement rates, raise positive termination rates, raise costs per placement, and lower costs per positive termination. A large youth work experience program is characterized by large percentages of full-time students, youth age 19 and under and a high proportion of cumulative enrollment in the work experience program activity. A relatively low cost per enrollment in work experience (cumulative) also suggests an in-school type program.

High proportions of classroom training and OJT expenditures and enrollments often lead to higher indirect placement rates and costs. Significant direct placement activity may be indicated by relatively high expenditures for services to participants. Direct placements will also generally lower "costs per" and raise the positive termination and entered employment rates.

2. *Participant Characteristics.* All participant characteristics listed among the interpretive factors have, on the average, lower entered employment rates than their counterparts. Prime sponsors who serve relatively large proportions of these difficult-to-place groups can be expected to have lower rates and higher costs per.

3. *Median Wages.* Higher post-CETA wages and increased wages from pre- to post-CETA may provide evidence for an emphasis on higher quality, longer term (more expensive) training in higher skilled jobs. Large increases which result from low pre-CETA wages may also indicate a high proportion of participants without prior work experience, or with limited or old work experience.

4. *Unemployment Rates.* Local unemployment rates are negatively correlated with all of the placement rates and are positively correlated with the costs per placement. That is, prime sponsors with higher than average unemployment rates can expect proportionately more costly programs with lower placement rates.

5. *Length of Stay.* Higher lengths of stay may provide evidence for an emphasis on higher quality, longer term (more expensive) training in higher skilled jobs. This will tend to raise the "costs per." On the other hand, this may reflect the nontermination of participants who should have been terminated earlier.

Displaying Worksheets in the Federal Register

For purposes of publication in the Federal Register, the complete set of worksheets for Region I, only, will be displayed. For the other Regions (II through X), only the regional numerical data will be provided. These data can be substituted for regional data in Region I worksheets for the appropriate performance indicator clusters and interpretive factors to obtain the worksheets for any other Region. National data are the same for all Regions and are contained in the worksheets for Region I.

BILLING CODE 4510-30-M

REGION I

WORKSHEETS

GRANT REVIEW GUIDELINES WITH KEY PERFORMANCE INDICATORS

PRIME SPONSOR_____

FEDERAL REPRESENTATIVE_____

DATE REVIEWED_____

PRIME SPONSOR

Federal Representative

TERMINATION CLUSTER	Formula (planned performance)	Planned for FY80	Actual FY 78	COMPARATIVE DATA, 4th Quarter, FY 1978							
				Region I, percent				National, percent			
				Low	33%	67%	High	Low	33%	67%	High
Total Positive as a % of Total Terminations	PPS I.B. 1 + I.B.2 + I.B. 3 / PPS I.B. x 100			45 3	67 0	74 0	84 2	31 8	68 6	76 4	93 0
Entered Employment as a % of Total Terminations Less Transfers to Other Subparts	PPS I.B. 1 / PPS I B -I B 2 x 100			24 8	44 8	55 1	73 1	10 2	42 9	55 6	83 4
Indirect Placements as a % of Total Terminations Less Transfers to other Subparts	PPS I.B.1.b. (1) + I.B. 1.b. (2) / PPS I.B - I B 2 x 100			24 6	42 4	52.4	73.1	8.3	34.8	47 3	83 4
Indirect Placements as a % of Entered Employment	PPS I.B.1.b. (1) + I.B.1.b. (2) / PPS I B.1 x 100			68 1	89 3	100.0	100 0	10.8	33.3	98 9	100.0

EXPLAIN OR JUSTIFY IF PLANNED PERFORMANCE FOR THE CLUSTER IS BELOW PREVIOUS PERFORMANCE OR THE LOWEST REGIONAL THIRD.

EXPLANATION/ JUSTIFICATION:

Explanation Third

Lower total positive termination rates (or high non-positive rates) may be due to:

- High enrollment of hard-to-place groups;
- High local unemployment rates;
- Inadequacies in program operation (e g., assessment, counseling, job development, subcontractor management, or internal management) or in program design (e.g., long "holding" periods before placement, poor coordination between components, classifying applicants as participants prior to actual enrollment in program activities, etc.)

Lower entered employment rates: Any of the above plus local emphasis on program activities whose goal is not placement--work experience for youth, remedial education, etc.

Lower Indirect placement rates: Any of the above plus inclusion of significant direct placement activities

Continue explanations on additional sheets if needed When explaining low termination rates, refer to Interpretive Factors Worksheets to compare local factors with Regional (and national) averages

PRIME SPONSOR _____

Federal Representative _____

COST CLUSTER	Formula	Planned for FY'80	Actual FY'78	COMPARATIVE DATA, 4th Quarter, FY'78 Region I, Dollars Low	33%	67%	High	National, Dollars Low	33%	67%	High
Cost per Positive Termination	BIS F.2. / PPS I B 1+I B 2+I B.3			820	1950	2700	4140	480	1610	2360	15,080
Cost per Entered Employment	BIS F.2. / PPS I.B 1			1030	2870	4300	1,810	680	2580	4110	20,570
Cost per Indirect Placement	BIS F.2. / PPS I.B.1.b.(1)+I.B.1.b.(2)			1300	3310	4640	11,810	930	3140	4670	39,930

EXPLAIN OR JUSTIFY IF PLANNED PERFORMANCE FOR THE CLUSTER IS ABOVE PREVIOUS PERFORMANCE OR THE HIGHEST REGIONAL THIRD.

Higher Costs per Positive Termination may be due to any of the factors leading to lowered positive termination rates (see termination cluster worksheet) plus:

- High local cost structures for standard items (e g , wage rates, rental costs, etc.);
- Use of more costly resources (e.g , proprietary schools, computers, special equipment, etc.);
- Emphasis on supportive services (transportation, day care, etc), classroom training, employability development, etc.;
- Higher than minimum rates for participant stipends or wages;
- Stress on longer term training for higher skill jobs;

Higher Costs per Entered Employment may be due to any of the factors contributing to higher positive termination costs indicated above plus those leading to lowered Entered Employment Rates (see termination cluster worksheet)

Higher Costs per Indirect Placement may be due to any of the factors contributing to higher positive termination costs indicated above plus the inclusion of direct job placement activities.

EXPLANATION/ JUSTIFICATION: Explanation Third

(Less admin costs, rounded to nearest $10)

Continue Explanations of additional sheets if needed When explaining high "costs per", refer to Interpretive Factors Worksheets to compare local factors with Regional (& national) averages.

PRIME SPONSOR _____

FEDERAL REPRESENTATIVE _____

INTERPRETIVE FACTORS

	Prime Sponsor Data[1]		FY 1978 Averages	
	Planned FY 1980	Actual FY 1978	Region I	National
A. Program Mix				
1. Percent of Expenditures				
Classroom Training			39.0	39.9
On-the-Job Training			12.7	13.0
Public Service Employment			3.0	4.9
Work Experience			34.4	30.9
Services to Participants			10.0	10.6
Other Activities			0.9	.7
	100%	100%	100%	100%
2. Percent of Cumulative Enrollments				
Classroom Training[2]			39.9	42.7
(Occup. Skills)	( )	-	-	-
(Other)	( )	-	-	-
On-the-Job Training			15.5	16.9
Public Service Employment	-		3.4	2.9
Work Experience			41.2	37.5
(In-school)	( )	-	-	-
(Other)	( )	-	-	-
	100%	100%	100%	100%
B. Enrollee Characteristics				
1. Females			49.4	52.2
2. Youth.. 18/19 and under (1978/1980)			26.0	26.6
19/20-21 (1978/1980)			20.2	21.5
3. Education: 8 yrs. and under (1978)	-		11.9	8.9
9-11 yrs. (1978)	-		38.7	36.7
School dropout (1980)	*	-	-	-
Student (H.S. or less) (1980)	*	-	-	-
4. Income: AFDC	*		22.7	16.2
Other Welfare/Receiving SSI (1978/1980)	*		13.9	9.6
Total Receiving Pub. Assist. (1980)	*	-	-	-
Economically Disadvan.	*		89.7	78.7

(continued on next page)

INTERPRETIVE FACTORS (continued)

	Prime Sponsor Data[1]		FY 1978 Averages	
	Planned FY 1980	Actual FY 1978	Region I	National
B Enrollee Characteristics (continued)				
5 Ethnic Blacks/Blacks (not (Hispanic) (1978/1980)			17 7	28.0
Spanish American/Hispanic (1978/1980)			9.5	10.1
6 Handicapped	*		7 0	6 1
7. Full-time student/In-School (1978/1980)	*		15 5	19.4
8. Offender	*		9.3	7.5
C. Median Wage				
1. Post-CETA	$ *	$	$ 3 35	$ 3.41
2. Pre-CETA (Excluding 'No-Previous Wage')	$ *	$	$ 2.82	$ 2.88
3. Increase (Decrease)	$ *	$	$ .53	$ .53
4 Pre-CETA (Including 'No-Previous Wage')	$ *	$	$ 2.49	$ 2.56
5 Increase (Decrease)	$ *	$	$ .86	$ .85
D. Unemployment Rate (1977)[3]	*		9 1	7.8
Unemployment Rate (1978)	*		5 9	6.3
E. Length-of-Stay (Months)				
1. Classroom Training, Prime Sponsor			3 7	5 0
2. Work Experience			3 1	3.5
3. On-the-Job Training			5 1	4.2
4 Total			4 4	4.3

* Optional data, insert as available

1/ To be filled in by Federal Representative.

2/ Includes prime sponsor classroom training for Fiscal Year 1978 and total of occupational skills and other classroom training for 1980

3/ Fiscal Year 1977 unemployment rates are provided in spaces for 1978 regional and national averages. Fiscal Year 1977 unemployment rates for sponsors should be obtained from Attachment III-C and placed in actual space for Fiscal Year 1978.

REGION II - PERFORMANCE INDICATOR CLUSTERS AND INTERPRETIVE FACTORS DISPLAYING REGIONAL DATA

PERFORMANCE INDICATOR CLUSTERS

TERMINATION CLUSTER	COMPARATIVE DATA Region II, percent Low	33%	67%	High
Total Positive as a % of Total Terminations	50 7	68 7	77 2	90 2
Entered Employment as a % of Total Terminations Less Transfers to Other Subparts	19 1	44 9	56 0	80 3
Indirect Placements as a % of Total Terminations Less Transfers to other Subparts	19 1	38 3	51 0	73 6
Indirect Placements as a % of Entered Employment	53 /	83 9	100.0	100 0
	Explanation Third			

COST CLUSTER	COMPARATIVE DATA Region II, Dollars Low	33%	67%	High
Cost per Positive Termination	1320	1980	2690	4260
Cost per Entered Employment	1650	3050	4240	9290
Cost per Indirect Placement	2010	3780	4740	11,500
			Explanation Third	

INTERPRETIVE FACTORS

A Program Mix

1 Percent of Expenditures

Classroom Training	37.5
On-the-job Training	15.5
Public Service Employment	2.0
Work Experience	31.1
Services to Participants	13.5
Other Activities	0.4
	100%

2 Percent of Cumulative Enrollments

Classroom Training 2/	40 0
(Occup Skills)	-
(other)	-
On-the-job Training	23.2
Public Service Employment	1.7
Work Experience	35.1
(in-school)	-
(other)	-
	100%

B Enrollee Characteristics

1 Females	51.4
2. Youth: 18/19 and under (1978/1980)	21.8
19/20-21 (1978/1980)	22.9
	9.1
3 Education: 8 yrs and under (1978)	
9-11 year (1978)	33.9
School dropout (1980)	-
Student (H S or less) (1980)	-
4. Income: AFDC	13.4
Other Welfare/ Receiving SSI (1978/1980)	11.6
Tot Receiving Pub Ass (1980)	
Economically Disad	76.0
5. Ethnic: Blacks/Blacks (not Hispanics) (1978/1980)	26.4
Spanish Am /Hispanic (1978/1980)	14.1
6 Handicapped	4.4
7. Fulltime student/In-school (1978/1980)	12.4
8 Offender	6.6

C Median Wage

1 Post CETA	$3.30
2 Pre-CETA (excluding 'No Previous Wage')	$2.85
3 Increase (Decrease)	$ .45
4 Pre-CETA (Including 'No Previous Wage')	$2.46
5 Increase (Decrease)	$ 84

D. Unemployment Rate (1977) 2/ 10 a

Unemployment Rate (1976) 8 1

E Length-of Stay (months)

1 Classroom Training, Prime Sponsor	4.2
2 Work Experience	3 9
3 On-the-Job Training	3 9
4 Total	4.4

REGION III - PERFORMANCE INDICATOR CLUSTERS AND INTERPRETIVE FACTORS DISPLAYING REGIONAL DATA

PERFORMANCE INDICATOR CLUSTERS

TERMINATION CLUSTER	COMPARATIVE DATA Region III, percent Low	33%	67%	High
Total Positive as a % of Total Terminations	31 8	68 3	74 4	92 3
Entered Employment as a % of Total Terminations Less Transfers to Other Subparts	16 0	33 9	50 5	77 5
Indirect Placements as a % of Total Terminations Less Transfers to other Subparts	15 7	31 6	45 0	67 9
Indirect Placements as a % of Entered Employment	20 3	04 4	100 0	100 0
	Explanation Third			

COST CLUSTER	COMPARATIVE DATA Region III, Dollars Low	33%	67%	High
Cost per Positive Termination	620	1640	2400	5410
Cost per Entered Employment	680	2830	5100	12,140
Cost per Indirect Placement	1380	3360	5230	12,140
			Explanation Third	

INTERPRETIVE FACTORS

A Program Mix

1 Percent of Expenditures

Classroom Training	39.7
On-the-job Training	11.8
Public Service Employment	9.7
Work Experience	31.3
Services to Participants	7.2
Other Activities	0.3
	100%

2 Percent of Cumulative Enrollments

Classroom Training 2/	45 7
(Occup Skills)	-
(other)	-
On-the-job Training	15.2
Public Service Employment	4 0
Work Experience	35.0
(in-school)	-
(other)	-
	100%

B Enrollee Characteristics

1	Females	49.8
2	Youth: 18/19 and under (1978/1980)	28 3
	19/20-21 (1978/1980)	21.7
3	Education: 8 yrs. and under (1978)	8.3
	9-11 year (1978)	35.0
	School dropout (1980)	- -
	Student (H S or less) (1980)	-
4	Income: AFDC	15.4
	Other Welfare/	10 8
	Receiving SSI (1978/1980)	
	Tot Receiving Pub Ass (1980)	-
	Economically Disad	69.2
5	Ethnic: Blacks/Blacks (not Hispanics) (1978/1980)	30 9
	Spanish Am /Hispanic (1978/1980)	2.9
6	Handicapped	5 2
7	Fulltime student/In-school (1978/1980)	18 6
8	Offender	5.8

C Median Wage

1	Post CETA	$3.45
2	Pre-CETA (excluding 'No Previous Wage')	$2.87
3	Increase (Decrease)	$ .58
4	Pre-CETA (Including 'No Previous Wage')	$2.57
5	Increase (Decrease)	$ .88

D Unemployment Rate (1977 3/)

Unemployment Rate (1978)	7.3
	6.6

E Length-of Stay (months)

1	Classroom Training, Prime Sponsor	5.4
2	Work Experience	3.2
3	On-the-Job Training	5.4
4	Total	4.2

REGION IV - PERFORMANCE INDICATOR CLUSTERS AND INTERPRETIVE FACTORS DISPLAYING REGIONAL DATA

PERFORMANCE INDICATOR CLUSTERS

TERMINATION CLUSTER	COMPARATIVE DATA Region IV, percent Low	33%	67%	High
Total Positive as a % of Total Terminations	39 8	66 0	72 7	90 2
Entered Employment as a % of Total Terminations Less Transfers to Other Subparts	10 8	33 2	47.2	83 4
Indirect Placements as a % of Total Terminations less Transfers to other Subparts	10 8	30 3	37 8	83 4
Indirect Placements as a % of Entered Employment	39 0	92 1	100.0	100 0
	Explanation Third			

COST CLUSTER	COMPARATIVE DATA Region IV, Dollars Low	33%	67%	High
Cost per Positive Termination	680	1750	2590	5920
Cost per Entered Employment	940	3550	5090	16,980
Cost per Indirect Placement	1090	4010	5520	16980
			Explanation Third	

INTERPRETIVE FACTORS

A Program Mix

1 Percent of Expenditures

Classroom Training	40.7
On-the-job Training	9 0
Public Service Employment	9.2
Work Experience	30 8
Services to Participants	9.9
Other Activities	0.4
	100%

2 Percent of Cumulative Enrollments

Classroom Training 2/	43.1
(Occup. Skills)	-
(other)	-
On-the-Job Training	12.6
Public Service Employment	5.4
Work Experience	38.8
(in-school)	
(other)	-
	100%

B. Enrollee Characteristics

1.	Females	56.6
2.	Youth: 18/19 and under (1978/1980)	31 2
	19/20-21 (1978/1980)	20.4
3.	Education: 8 yrs. and under (1978)	10.5
	9-11 year (1978)	39.9
	School dropout (1980)	-
	Student (H S. or less) (1980)	-
4.	Income: AFDC	15.2
	Other Welfare/ Receiving SSI (1978/1980)	8.2
	Tot Receiving Pub. Ass. (1980)	-
	Economically Disad.	80.7
5.	Ethnic: Blacks/Blacks (not Hispanics) (1978/1980)	50.8
	Spanish Am./Hispanic (1978/1980)	1.3
6.	Handicapped	4.7
7.	Fulltime student/In-school (1978/1980)	25.7
8.	Offender	5.0

C Median Wage

1	Post CETA	$3.06
2	Pre-CETA (excluding 'No Previous Wage')	$2.70
3	Increase (Decrease)	$ .36
4	Pre-CETA (Including 'No Previous Wage')	$2.47
5	Increase (Decrease)	$ .59

D. Unemployment Rate (1977 3/ / 1978)

Unemployment Rate (1977 3/	7.2
Unemployment Rate (1978)	5.7

E. Length-of Stay (months)

1	Classroom Training, Prime Sponsor	6.0
2	Work Experience	4.3
3	On-the-Job Training	3.5
4	Total	4.9

REGION V - PERFORMANCE INDICATOR CLUSTERS AND INTERPRETIVE FACTORS DISPLAYING REGIONAL DATA

PERFORMANCE INDICATOR CLUSTERS

TERMINATION CLUSTER	COMPARATIVE DATA Region V, percent Low	33%	67%	High
Total Positive as a % of Total Terminations	36.0	65.0	75.1	93.0
Entered Employment as a % of Total Terminations less Transfers to Other Subparts	10 2	44 1	54 5	81 6
Indirect Placements as a % of Total Terminations less Transfers to other Subparts	10 2	33 6	43 9	70 6
Indirect Placements as a % of Entered Employment	29 1	73.7	92.0	100 0
	Explanation Third			

COST CLUSTER	COMPARATIVE DATA Region V, Dollars Low	33%	67%	High
Cost per Positive Termination	580	1490	2630	15,080
Cost per Entered Employment	680	2470	4300	20,570
Cost per Indirect Placement	1580	3220	5080	39,930
			Explanation Third	

INTERPRETIVE FACTORS

A Program Mix

1 Percent of Expenditures

Classroom Training	42 4
On-the-job Training	11 6
Public Service Employment	3 3
Work Experience	30 1
Services to Participants	11.1
Other Activities	1.5
	100%

2 Percent of Cumulative Enrollments

Classroom Training 2/	45 2
(Occup Skills)	-
(other)	-
On-the-job Training	14.1
Public Service Employment	2.2
Work Experience	38.4
(in-school)	
(other)	-
	100%

B Enrollee Characteristics

1	Females	50.2
2	Youth: 18/19 and under (1978/1980)	25.8
	19/20-21 (1978/1980)	22.5
3	Education: 8 yrs and under (1978)	8.4
	9-11 year (1978)	37.8
	School dropout (1980)	-
	Student (H S or less) (1980)	-
4.	Income: AFDC	20.1
	Other Welfare/	
	Receiving SSI (1978/1980)	9.2
	Not Receiving Pub Ass (1980)	-
	Economically Disad	78.0
5	Ethnic: Blacks/Blacks (not Hispanics) (1978/1980)	26.4
	Spanish Am /Hispanic (1978/1980)	4.7
6	Handicapped	7.2
7.	Fulltime student/In-school (1978/1980)	19.3
8	Offender	9 4

C Median Wage

1	Post CETA	$ 3.67
2	Pre-CETA (excluding 'No Previous Wage'	$ 2.96
3	Increase (Decrease)	$ .71
4	Pre-CETA (Including 'No Previous Wage')	$ 2.70
5	Increase (Decrease)	$ .97

D Unemployment Rate 3/

Unemployment Rate (1977)	7.0
Unemployment Rate (1978)	5.6

E Length-of Stay (months)

1	Classroom Training, Prime Sponsor	6.2
2	Work Experience	4.8
3	On-the-Job Training	5.2
4	Total	5 2

REGION VI - PERFORMANCE INDICATOR CLUSTERS AND INTERPRETIVE FACTORS DISPLAYING REGIONAL DATA

PERFORMANCE INDICATOR CLUSTERS

TERMINATION CLUSTER	COMPARATIVE DATA Region VI, percent Low	33%	67%	High
Total Positive as a % of Total Terminations	42 9	68 9	80 1	93 0
Entered Employment as a % of Total Terminations less Transfers to Other Subparts	25.1	44 7	59 7	74 9
Indirect Placements as a % of Total Terminations less Transfers to other Subparts	16 5	34 0	48 /	71 6
Indirect Placements as a % of Entered Employment	29 1	72 5	92 8	100.0
	Explanation Third			

COST CLUSTER	COMPARATIVE DATA Region VI, Dollars Low	33%	67%	High
Cost per Positive Termination	480	1440	1770	3650
Cost per Entered Employment	810	2170	2820	7700
Cost per Indirect Placement	1650	2430	3650	8460
			Explanation Third	

INTERPRETIVE FACTORS

A. Program Mix

1. Percent of Expenditures

Classroom Training	34.6
On-the-job Training	12 5
Public Service Employment	5.5
Work Experience	39 9
Services to Participants	7.0
Other Activities	0.5
	100%

2. Percent of Cumulative Enrollments

Classroom Training 2/	35.2
(Occup. Skills)	-
(other)	-
On-the-job Training	18.3
Public Service Employment	2.9
Work Experience	43.6
(in-school)	-
(other)	-
	100%

B. Enrollee Characteristics

1. Females	55.2
2. Youth: 18/19 and under (1978/1980)	30.4
19/20-21 (1978/1980)	22.0
3. Education: 8 yrs and under (1978)	11.1
9-11 year (1978)	32.0
School dropout (1980)	-
Student (H.S. or less) (1980)	-
4. Income: AFDC	8.3
Other Welfare/ Receiving SSI (1978/1980)	8.4
Pct. Receiving Pub. Ass. (1980)	-
Economically Disad	72 4
5. Ethnic: Blacks/Blacks (not Hispanics) (1978/1980)	32.4
Spanish Am /Hispanic (1978/1980)	23.5
6. Handicapped	4.3
7. Fulltime student/In-school (1978/1980)	23.6
8. Offender	4.4

C. Median Wage

1. Post CETA	$ 3.18
2 Pre-CETA (excluding 'No Previous Wage')	$ 2 77
3. Increase (Decrease)	$ .41
4 Pre-CETA (Including 'No Previous Wage')	$ 2 38
5 Increase (Decrease)	$ .80

D. Unemployment Rate (1977) 3/	6.5
Unemployment Rate (1978)	5 6

E. Length-of Stay (months)

1 Classroom Training, Prime Sponsor	4 8
2. Work Experience	3 6
3. On-the-Job Training	3 9
4. Total	3 7

REGION VII - PERFORMANCE INDICATOR CLUSTERS AND INTERPRETIVE FACTORS DISPLAYING REGIONAL DATA

PERFORMANCE INDICATOR CLUSTERS

TERMINATION CLUSTER	COMPARATIVE DATA Region VII, percent Low	33%	67%	High
Total Positive as a % of Total Terminations	46 0	69.9	77.2	92.6
Entered Employment as a % of Total Terminations Less Transfers to Other Subparts	32 2	53 3	63 1	81 8
Indirect Placements as a % of Total Terminations less Transfers to other Subparts	23 4	47.3	55 1	77.5
Indirect Placements as a % of Entered Employment	51 7	89 9	99 6	100.0
	Explanation Third			

COST CLUSTER	COMPARATIVE DATA Region VII, Dollars Low	33%	67%	High
Cost per Positive Termination	770	1610	2280	3870
Cost per Entered Employment	880	2120	2920	6020
Cost per Indirect Placement	930	2750	3550	6080
			Explanation Third	

INTERPRETIVE FACTORS

A Program Mix

1. Percent of Expenditures

Classroom Training	46 9
On-the-job Training	15 1
Public Service Employment	5.0
Work Experience	14.3
Services to Participants	13.3
Other Activities	3.0
	100%

2 Percent of Cumulative Enrollments

Classroom Training 2/	45.2
(Occup Skills)	-
(other)	-
On-the-job Training	21 3
Public Service Employment	3.9
Work Experience	29.5
(in-school)	-
(other)	-
	100%

B Enrollee Characteristics

1.	Females	51.5
2	Youth: 18/19 and under (1978/1980)	21.9
	19/20-21 (1978/1980)	23 8
3.	Education: 8 yrs and under (1978)	6.7
	9-11 year (1978)	34.9
	School dropout (1980)	-
	Student (H S or less) (1980)	-
4.	Income: AFDC	18 0
	Other Welfare/ Receiving SSI (1978/1980)	7.5
	Tot Receiving Pub Ass (1980)	-
	Economically Disad	75 0
5.	Ethnic: Blacks/Blacks (not Hispanics) (1978/1980)	23.8
	Spanish Am./Hispanic (1978/1980)	2.8
6	Handicapped	6.9
7	Fulltime student/in-school (1978/1980)	16.4
8	Offender	9.0

C. Median Wage

1	Post CETA	$ 3.56
2	Pre-CETA (excluding 'No Previous Wage')	$ 2.95
3	Increase (Decrease)	$ .61
4	Pre-CETA (Including 'No Previous Wage')	$ 2.80
5	Increase (Decrease)	$ .76

D Unemployment Rate

Unemployment Rate (1977) 3/	5.3
Unemployment Rate (1978)	4.4

E Length-of Stay (months)

1	Classroom Training, Prime Sponsor	5.0
2	Work Experience	1.7
3	On-the-Job Training	3.9
4	Total	3.8

REGION VIII - PERFORMANCE INDICATOR CLUSTERS AND INTERPRETIVE FACTORS DISPLAYING REGIONAL DATA

PERFORMANCE INDICATOR CLUSTERS

TERMINATION CLUSTER	COMPARATIVE DATA Region VIII, percent Low	33%	67%	High
Total Positive as a % of Total Terminations	66 9	77 5	83 8	89 3
Entered Employment as a % of Total Terminations Less Transfers to Other Subparts	30.7	57 2	64 0	74 2
Indirect Placements As a % of Total Terminations less transfers to other Subparts	31 8	38 0	54 3	74 2
Indirect Placements as a % of Entered Employment	47.2	68 3	95 4	100 0
	Explanation Third			

COST CLUSTER	COMPARATIVE DATA Region VIII, Dollars Low	33%	67%	High
Cost per Positive Termination	520	940	1270	2260
Cost per Entered Employment	730	1480	2140	3710
Cost per Indirect Placement	1320	1850	2790	3730
			Explanation Third	

INTERPRETIVE FACTORS

A. Program Mix

1. Percent of Expenditures

Classroom Training	35.8
On-the-job Training	21.2
Public Service Employment	4.5
Work Experience	21.2
Services to Participants	16.9
Other Activities	0 4
	100%

2. Percent of Cumulative Enrollments

Classroom Training 2/	43.0
(Occup Skills)	-
(other)	-
On-the-job Training	24.0
Public Service Employment	3.1
Work Experience	29.7
(in-school)	-
(other)	-
	100%

B. Enrollee Characteristics

1. Females	52.4
2. Youth: 18/19 and under (1978/1980)	24 3
19/20-21 (1978/1980)	19.7
3. Education: 8 yrs and under (1978	8.7
9-11 year (1978)	32.9
School dropout (1980)	-
Student (H.S. or less) (1980)	-
4. Income: AFDC	12 0
Other Welfare/	8.3
Receiving SSI (1978/1980)	-
Tot. Receiving Pub. Ass. (1980)	
Economically Disad.	83.9
5 Ethnic: Blacks/Blacks (not Hispanics) (1978/1980)	5.7
Spanish Am /Hispanic (1978/1980)	21.0
6. Handicapped	12.9
7. Fulltime student/In-school (1978/1980)	15.9
8. Offender	8.5

C. Median Wage

1 Post CETA	$ 3.61
2 Pre-CETA (excluding 'No Previous Wage')	$ 2 82
3. Increase (Decrease)	$ .79
4. Pre-CETA (Including 'No Previous Wage')	$ 2.41
5. Increase (Decrease)	$ 1.20

D. Unemployment Rate

Unemployment Rate (1977) 3/	5.4
Unemployment Rate (1978)	5.2

E. Length-of Stay (months)

1. Classroom Training, Prime Sponsor	3.1 Months
2. Work Experience	2.[illegible]
3. On-the-Job Training	5.[illegible]
4. Total	[illegible]

REGION IX - PERFORMANCE INDICATOR CLUSTERS AND INTERPRETIVE FACTORS DISPLAYING REGIONAL DATA

PERFORMANCE INDICATOR CLUSTERS

TERMINATION CLUSTER	COMPARATIVE DATA Region IX, percent			
	Low	33%	67%	High
Total Positive as a % of Total Terminations	54 4	71 8	78 8	88 1
Entered Employment as a % of Total Terminations Less Transfers to Other Subparts	20 0	49 7	63 0	82 8
Indirect Placements as a % of Total Terminations less Transfers to other Subparts	8 3	43 5	51 5	72 1
Indirect Placements as a % of Entered Employment	10 8	90 8	99 9	100 0
	Explanation Third			

COST CLUSTER	COMPARATIVE DATA Region IX, Dollars			
	Low	33%	67%	High
Cost per Positive Termination	650	1460	1990	3890
Cost per Entered Employment	770	2300	3180	6410
Cost per Indirect Placement	1770	2550	3870	7180
			Explanation Third	

INTERPRETIVE FACTORS

A Program Mix

1 Percent of Expenditures

Classroom Training	41.7
On-the-job Training	15 4
Public Service Employment	2 8
Work Experience	29 5
Services to Participants	10.0
Other Activities	0 6
	100%

2 Percent of Cumulative Enrollments

Classroom Training, 2/	45 8
(Occup Skills)	-
(other)	-
On-the-job Training	17.0
Public Service Employment	0.9
Work Experience	36.4
(in-school)	-
(other)	-
	100%

B Enrollee Characteristics

1	Females	52.4
2	Youth: 18/19 and under (1978/1980)	25 4
	19/20-21 (1978/1980)	20.1
3	Education: 8 yrs and under (1978)	5 7
	9-11 year (1978)	36.3
	School dropout (1980)	-
	Student (H S or less) (1980)	-
4	Income: AFDC	17.1
	Other Welfare/	9.1
	Receiving SSI (1978/1980)	-
	Tot Receiving Pub Ass (1980)	
	Economically Disad	86.5
5	Ethnic: Blacks/Blacks (not Hispanics) (1978/1980)	17.1
	Spanish Am /Hispanic (1978/1980)	24 3
6	Handicapped	5.7
7	Fulltime student/In-school (1978/1980)	19.9
8	Offender	9.2

C Median Wage

1	Post CETA	$ 3 78
2	Pre-CETA (excluding 'No Previous Wage')	$ 3 03
3	Increase (Decrease)	$ .75
4	Pre-CETA (Including 'No Previous Wage')	$ 2.77
5	Increase (Decrease)	$ 1.01

D Unemployment Rate (1977) 3/

Unemployment Rate (1978)	9.6
	7.8

E Length-of Stay (months)

1	Classroom Training, Prime Sponsor	3.2
2	Work Experience	1.9
3	On-the-Job Training	2.1
4	Total	2.9

REGION X - PERFORMANCE INDICATOR CLUSTERS AND INTERPRETIVE FACTORS DISPLAYING REGIONAL DATA

PERFORMANCE INDICATOR CLUSTERS

TERMINATION CLUSTER	COMPARATIVE DATA Region X, percent Low	33%	67%	High
Total Positive as a % of Total Terminations	56 7	72 3	78 4	87 9
Entered Employment as a % of Total Terminations Less Transfers to Other Subparts	17 0	40 3	55 5	75 6
Indirect Placements as a % of Total Terminations Less Transfers to other Subparts	17 (	33 3	42.4	61 5
Indirect Placements as a % of Entered Employment	45 7	79 0	93.9	100 0
	Explanation Third			

COST CLUSTER	COMPARATIVE DATA Region X, Dollars Low	33%	67%	High
Cost per Positive Termination	540	1690	2190	3460
Cost per Entered Employment	990	3100	4140	6650
Cost per Indirect Placement	2160	3640	4490'	7640
			Explanation Third	

INTERPRETIVE FACTORS

A. Program Mix

1. Percent of Expenditures

Classroom Training	37.0
On-the-job Training	15 7
Public Service Employment	1.7
Work Experience	32.5
Services to Participants	11.9
Other Activities	1.2
	100%

2. Percent of Cumulative Enrollments

Classroom Training 2/	39.4
(Occup. Skills)	-
(other)	-
On-the-job Training	17.8
Public Service Employment	0.8
Work Experience	41.9
(in-school)	-
(other)	-
	100%

B Enrollee Characteristics

1	Females	52.0
2	Youth: 18/19 and under (1978/1980)	27.7
	19/20-21 (1978/1980)	18.7
3.	Education: 8 yrs and under (1978)	7.7
	9-11 year (1978)	35.9
	School dropout (1980)	-
	Student (H.S. or less) (1980)	-
4	Income: AFDC	18 4
	Other Welfare/ Receiving SSI (1978/1980)	11.0
	Tot Receiving Pub Ass. (1980)	-
	Economically Disad	87 7
5.	Ethnic: Blacks/Blacks (not Hispanics) (1978/1980)	7.5
	Spanish Am./Hispanic (1978/1980)	6.0
6.	Handicapped	11.0
7.	Fulltime student/in-school (1978/1980)	22.7
8.	Offender	12.4

C. Median Wage

1	Post CETA	$ 3 83
2	Pre-CETA (excluding 'No Previous Wage')	$ 3 27
3	Increase (Decrease)	$ 56
4	Pre-CETA (Including 'No Previous Wage')	$ 2 99
5.	Increase (Decrease)	$ 84

D. Unemployment Rate (1977 3/) 12 5
Unemployment Rate (1976) 8 6

E Length-of Stay (months)

1.	Classroom Training, Prime Sponsor	4 6
2.	Work Experience	1 9
3.	On-the-Job Training	3.5
4.	Total	3 6

ATTACHMENT II TO FM NO. 284-79

SCATTERGRAMS OF KEY PERFORMANCE INDICATORS[1/]

Scattergrams prepared by the SPSS computer program have been included so that users can graphically see the variation in the indicators. Regions are plotted on the vertical axis with one line for each Region. The value for the performance indicator is shown on the horizontal axis. The national distribution is plotted on two lines at the bottom of the graph, repeating the regional plots above it. Each asterisk (*) indicates a single occurrence. Multiple occurrences are shown by a one-digit number from 2 to 8. Nine or more occurrences are shown by a "9"

How to Read Scattergrams: Scattergrams can be used in several different ways. The easiest is simple inspection to see how the data are distributed, and what are the lows, the highs, and the median. To aid in visual understanding, the data have been divided into low, middle, and high thirds. Such a division also makes it easier to see differences between Regions

Some users will want to know the exact value of a particular occurrence or plotted point. To determine the value of any particular occurrence for an indicator, place a ruler vertically so that it intersects the point (a digit or "*") and read the value from the scale at the top or bottom of the page. The top and bottom scales are the same, although different reference values are printed. Use whichever reference value is most

convenient. The Region to which the point belongs can be read from either side scale. Once the value has been determined, it is then possible to search the lists of prime sponsors to see which one is represented by the particular plotted point.

This process can be reversed. To find which point on the scattergram represents a given prime sponsor, first find the value of the desired indicator for that prime sponsor from the prime sponsor lists (Attachment III-A).[2/] Then locate that value on the top and bottom scales of the scattergram for the desired indicator. A ruler placed through the value located on the top and bottom scales should intersect the prime sponsor's plotted point for his Region.

The data from which the scattergrams were plotted were derived from the Regional Automated System (RAS) during mid-March 1979. Since then, it is possible that some missing data have been added and some incorrect data have been updated.

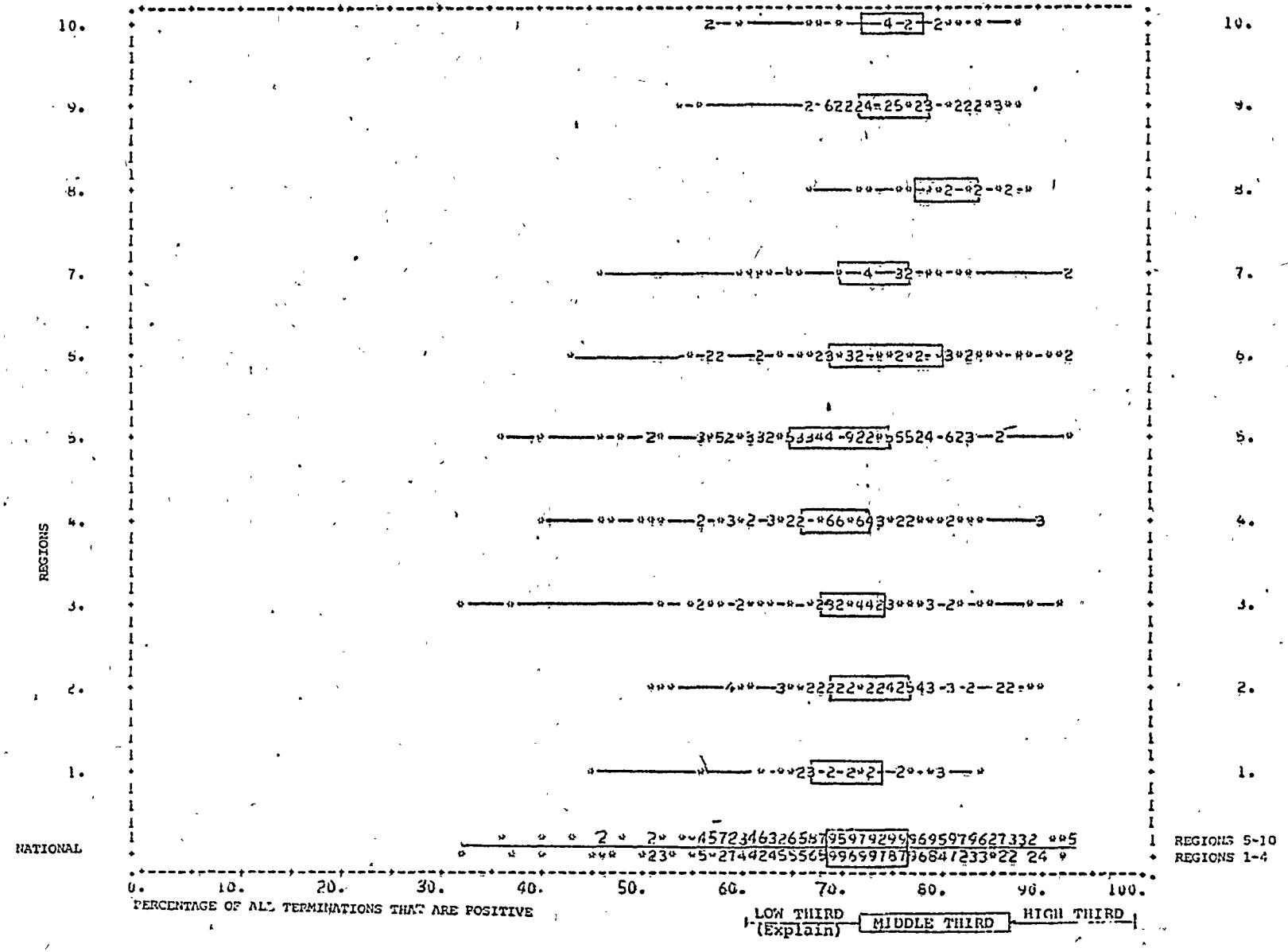
1/ For this review, scattergrams for the cost indicators are not included. For an array of the indicators from the lowest to the highest prime sponsor costs by Region, comparable with the scattergrams, see Attachment III-B for the specific indicator. (See following footnote concerning Attachment III.)

2/ Attachment III of this field memorandum, containing a listing of performance by prime sponsor, is not being provided for the Federal Register. Therefore, it will not be possible to identify the performance of specific prime sponsors by using the scattergrams.

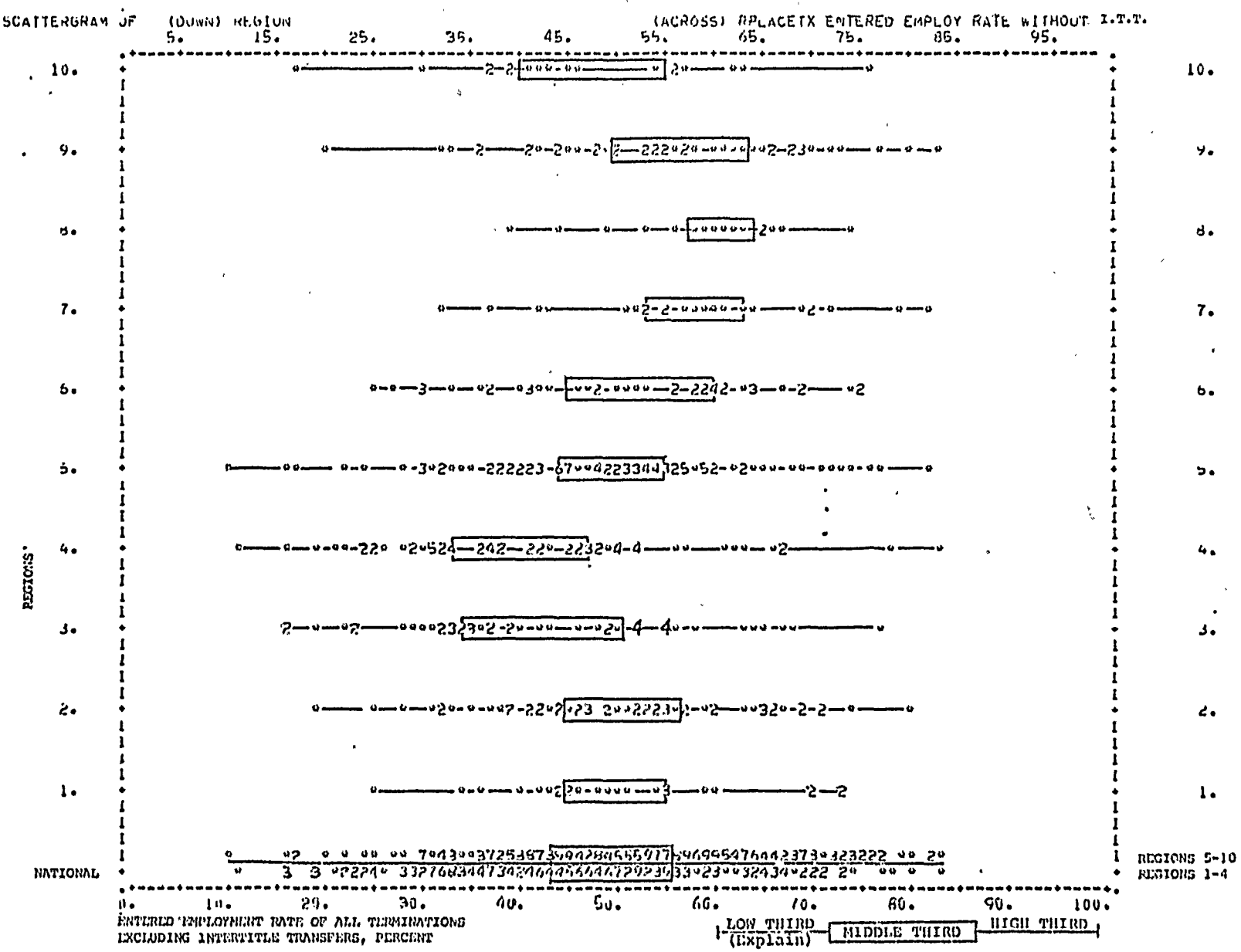
STATISTICAL PACKAGE FOR THE SOCIAL SCIENCES 05/03/79 PAGE 1

FOURTH QUARTER FY 1978 PSS & FSR

SCATTERGRAM OF (DOWN) REGION (ACROSS) RPOSTERM POSITIVE TERMINATION RATE



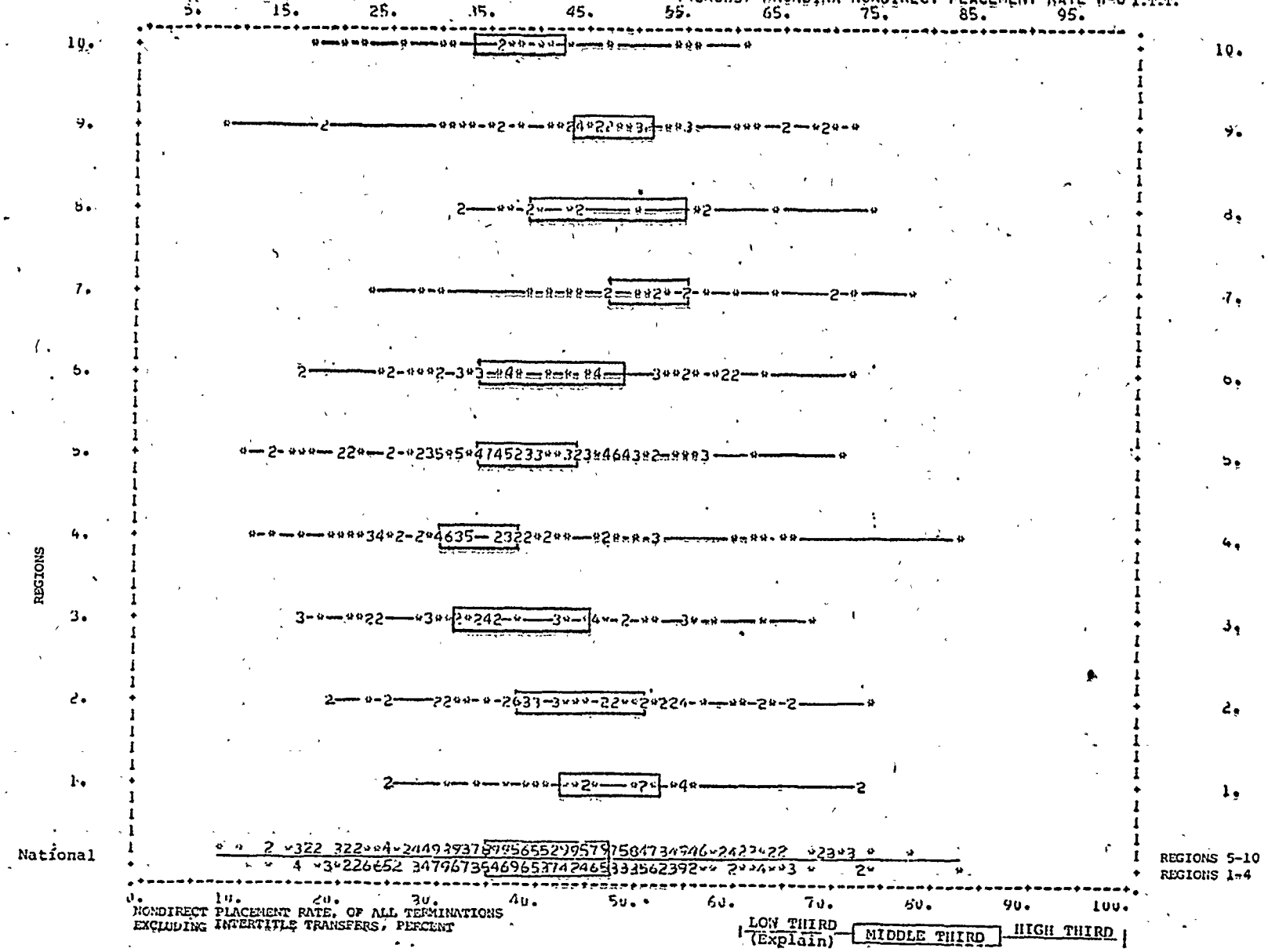
FOURTH QUARTER FY 1978 PSS & FSR



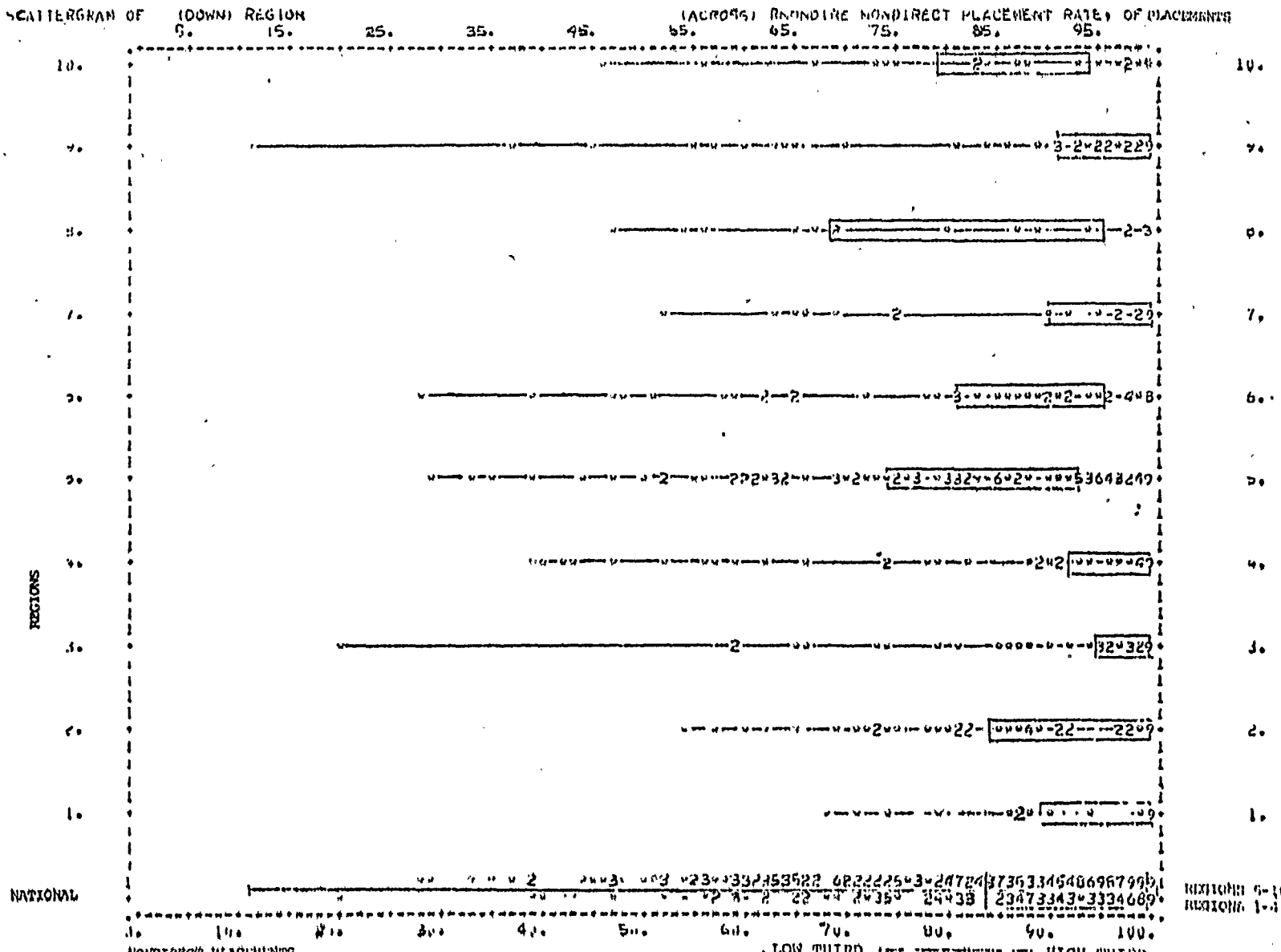
STATISTICAL PACKAGE FOR THE SOCIAL SCIENCES 05/03/79 PAGE 3

FOURTH QUARTER FY 1979 PSS & FSR

SCATTERGRAM OF (DOWN) REGION (ACROSS) RNONDIRX NONDIRECT PLACEMENT RATE W=0 I.T.T.



STATISTICAL PACKAGE FOR THE SOCIAL SCIENCES 05/03/79 PAGE 4



BILLING CODE 4510-30-C

Signed at Washington, D.C. this 22nd day of June 1979.

Charles B. Knapp,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. 79-21866 Filed 7-30-79; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-79-17-M]

Rio Algom Corp.; Petition for Modification of Application of Mandatory Safety Standard

Rio Algom Corporation, P.O. Box 610, Moab, Utah, 84532, has filed a petition to modify the application of 30 CFR 57.21-78 (gassy mines—permissible equipment) to its Lisbon Mine, located in La Sal County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. The petitioner's hard-rock uranium mine is classified as a gassy mine.

2. The standard states in part that only permissible (schedule 31) equipment may be used beyhond the last open crosscut in gassy mines.

3. The petitioner states that it has been unable to obtain suitable, reliable, mobile diesel-powered equipment that is schedule 31 qualified for use in its mine.

4. Schedule 31 qualified front-end loaders obtained by the petitioner have proven unreliable and inadequately available for production work due to maintenance and breakdown problems.

5. As an alternative to the use of schedule 31 equipment, the petitioner proposes to use suitable schedule 24 qualified mobile diesel-powered equipment beyond the last open crosscut under the following conditions:

a. Air ventilation from intake air at a factor of 83.3 CFM of air for every square foot of face area will be maintained in each heading at all times, with a minimum of volume 5,000 CFM.

b. Ventilation will be restored after any disruption before schedule 24 equipment is allowed to enter the area where the disruption has occurred.

c. The petitioner will conduct inspections of line brattice fans, vent tubing and other ventilating equipment twice each working shift, making repairs as necessary and taking methane readings. The results of the methane inspections will be entered by the petitioner in its ventilation and gas log.

d. The petitioner will conduct methane inspections at least four times each working shift. A combustible gas monitor will be installed in headings where methane inspections indicate concentrations of methane gas exceeding 25 percent.

e. Records and logs of ventilation and gas inspections will be available for inspection by miners, MSHA personnel and other interested persons.

f. The petitioner will drill pilot and cover holes ahead of the face in any new development headings to search for the presence of gas. If there is any indication of combustible gas flowing from a cover or pilot hole, no schedule 24 diesel-powered equipment will be allowed to operate beyond the last open crosscut unless combustible gas levels in the heading fall below 25 percent.

6. The petitioner states that this alternative will achieve no less protection for its miners than that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before August 30, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: July 17, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-23586 Filed 7-30-79; 8:45 am]

BILLING CODE 4510-43-M

Office of the Secretary

[TA-W-5,775 et al.]

Airco, Inc., Union, N.J., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investgations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 10, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 10, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 26th day of July 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Airco, Inc., Airco Welding Products (I.A.M.A.W.).	Union, N.J.	7/25/79	7/13/79	TA-W-5,775	Cutting and welding torches, regulators, and electrical welding equipment.
Betex (workers)	Paterson, N.J.	7/25/79	7/16/79	TA-W-5,776	Screen printing on cloth.
Brewster Finishing Co (workers)	Paterson, N.J.	7/25/79	7/15/79	TA-W-5,777	Dye and roller printing cloth.
M. P. Goodkin Co. (company)	Irvington, N.J.	7/24/79	7/10/79	TA-W-5,778	Industrial cameras.
Loudspeaker Component Corp. (workers)	Lancaster, Wis.	7/24/79	7/19/79	TA-W-5,779	Gaskets and speaker cones for radios, TV's and stereos.
Magnavox Consumer Electronics Co. (International Woodworkers of America).	Johnson City, Tenn.	7/24/79	6/27/79	TA-W-5,780	Cabinets for televisions and stereos.
Robison-Anton Textile Co. (ACTWU)	Fairview, N.J.	7/24/79	7/16/79	TA-W-5,781	Yarn and lace dyeing, also yarn and thread processing.
SKF Industries, Ball Bearing Division (USWA).	Altoona, Pa.	7/24/79	7/20/79	TA-W-5,782	Ball bearings.

[FR Doc. 79-23587 Filed 7-30-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5503]

Genesco, Inc., Men's Apparel Sector, Ainsbrooke Division, Florence, Ala.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 4, 1979, in response to a worker petition received on May 29, 1979, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing knitted fabrics at the Florence, Alabama plant of the Ainsbrooke Division of Genesco, Incorporated. The investigation revealed that the plant primarily produced knitted fabric used by Ainsbrooke in the manufacture of men's underwear and knit tops and also produced some finished men's underwear and knit tops (polo shirts). In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Department survey of Ainsbrooke's customers indicated that most respondents purchased no imported men's underwear in 1978 or the first three months of 1979. Customers which decreased purchases of underwear from Ainsbrooke in 1978 compared to 1977 and/or the first three months of 1979 compared to 1978 did not increase purchases of imported underwear in comparable time periods.

The same survey indicated that customers which decreased purchases of knit tops from Ainsbrooke and increased purchases of imported knit shirts represented an insignificant proportion of Ainsbrooke's decline in total sales.

Conclusion

After carful review, I determine that all workers of the Florence, Alabama plant of the Ainsbrooke Division of the Men's Apparel Sector of Genesco, Incorporated are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th Day of July 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-23588 Filed 7-30-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5556]

Golo Footwear Corp., Dunmore, Pa.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 12, 1979 in response to a worker petition received on June 4, 1979 which was filed on behalf of workers and former workers producing women's shoes and boots at Golo Footwear Corporation, Dunmore, Pennsylvania. The investigation revealed that the plant produces primarily women's dress and casual shoes and boots, except athletic. It is concluded that all of the requirements have been met.

U.S. imports of women's dress and casual shoes and boots, except athletic increased in 1978 compared to 1977 and in the first quarter of 1979 compared to the first quarter of 1978.

Company sales and production of domestically-produced women's shoes and boots in the last quarter of 1978 compared to the last quarter of 1977, and in the first quarter of 1979 compared to the first quarter of 1978.

Company sales of imported women's shoes and boots increased in the first quarter of 1979 compared to the first quarter of 1978.

Plant employment declined in 1978 compared to 1977 and in the first quarter of 1979 compared to the first quarter of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's shoes and boots produced at Golo Footwear Corporation, Dunmore, Pennsylvania contributed importantly to the decline in sales or produciton and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Golo Footwear Corporation, Dunmore, Pennsylvania who became totally or partially separated from employment on or

after October 22, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 24th day of July 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-23589 Filed 7-30-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5735, 5736, and 5737]

Henry I. Siegel Co. Inc., Bruceton, Tenn., Tiptonville, Tenn., and Verona, Miss.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on July 11, 1979 in response to a worker petition received on June 29, 1979 which was filed on behalf of workers and former workers producing men's coats at the Bruceton, Tennessee plant, men's and women's vests and coats at the Tiptonville, Tennessee plant, and men's and women's coats at the Verona, Mississippi plant of Henry I. Siegel Company, Incorporated. The investigation revealed that the Tiptonville plant primarily produces vests. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' tailored dress coats and sportcoats increased absolutely in terms of quantity in 1978 compared with 1977.

U.S. imports of men's and boys' tailored suits increased absolutely in terms of quantity during the first quarter of 1979 compared with the first quarter of 1978.

U.S. imports of men's and boys' tailored suit vests increased absolutely in terms of quantity in the first quarter of 1979 compared with the first quarter of 1978.

U.S. imports of women's, misses', and children's suits, which includes vests, increased absolutely in terms of quantity in 1978 compared with 1977.

U.S. imports of women's, misses', and children's coats and jackets increased absolutely in terms of quantity in 1978 compared with 1977.

The Department conducted a survey of customers purchasing suits (which includes vests) and sport coats from the Henry I. Siegel Company. Some survey respondents indicated they increased purchases of imported suits and sports coats and decreased purchases from the Henry I. Siegel Company during the period 1976 through 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with coats produced at the Bruceton, Tennessee and Verona, Mississippi plants and with vests produced at the Tiptonville, Tennessee plant contributed importantly to the decline in sales or production and to the total or partial separation of workers of those plants. In accordance with the provisions of the Act, I make the following certification:

All workers of the Bruceton, Tennessee (Lexington Avenue) plant's sport coat department and the Verona, Mississippi plant of Henry I. Siegel Company, Incorporated who became totally or partially separated from employment on or after August 15, 1978; and all workers of the Tiptonville, Tennessee plant of Henry I. Siegel Company, Incorporated Tennessee who became totally or partially separated from employment on or after July 15, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the trade Act of 1974.

Signed at Washington, D.C. this 25th day of July 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-23590 Filed 7-30-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5604]

K & M Division, Jonathan Logan, Inc., North Bergen, N.J.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 18, 1979 in response to a worker petition received on June 12, 1979 which was filed by the International Ladies Garment Workers Union on behalf of workers and former workers producing ladies' dresses and sportswear at the K & M Division of Jonathan Logan, Incorporated, North Bergen, New Jersey. The investigation revealed that the plant primarily produces samples of ladies' dresses and pantsuits.

Petitioning group of workers was certified as eligible to apply for adjustment assistance in a revised determination issued on July 17, 1979 (TA-W-4699). Since workers of the K & M Division of Jonathan Logan newly separated, totally or partially, from employment on or after December 27,1977 (impact date) and before July 17, 1981 (expiration date of the revised certification) are covered by an existing determination, a new investigation would serve no purpose. Consquently, the investigation has been terminated.

Signed at Washington, D.C. this 23rd day of July 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-23592 Filed 7-30-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5,770 et al.]

J. B. Lion Corp., Bridgeport, Conn., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or portion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request

a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 10, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 10, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 25th day of July 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
J. B. Lion Corp. (International Goods, Plastics Novelty Workers Union).	Bridgeport, Conn	7/24/79	7/17/79	TA-W-5, 770	Ladies' handbags.
Magnavox Consumer Electronic Co. (workers)	Morristown, Tenn	7/23/79	7/14/79	TA-W-5, 771	Color TV modules, components, including UHR and VHR tuners.
Naru Mills (workers)	Philadelphia, Pa	7/9/79	7/2/79	TA-W-5, 772	Knitted yard goods.
Paktron, Inc. (workers)	Lynchburg, Va	7/12/79	6/25/79	TA-W-5, 773	Capacitors.
Reliable Coal Corp. (U.M.W.A.)	Kingwood, W. Va	7/9/79	7/5/79	TA-W-5, 774	Mining of coal.

[FR Doc. 79-23591 Filed 7-30-79 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5083]

Wyoming Valley Garment Co., Inc., Wilkes-Barre, Pa.; Revised Determination on Reconsideration

On July 16, 1979 (44 FR 43362), the Department of Labor granted administrative reconsideration of the negative determination which it had made on May 18, 1979 (44 FR 30481), pursuant to Section 223 of the Trade Act of 1974 for all workers at the Wilkes-Barre, Pennsylvania, plant of the Wyoming Valley Garment Co., Inc., regarding eligibility to apply for worker adjustment assistance.

In its reconsideration, the Department reviewed the investigative file on the subject firm and its major manufacturer. The review revealed that one manufacturer, which supplied Wyoming Valley Garment with virtually all of its orders in 1977 and a major share in 1978, reduced its purchases of men's trousers substantially from Wyoming Valley Garment and experienced a decline in its total sales of men's trousers in 1978. The secondary survey conducted by the Department of this manufacturer's retail customers revealed that several customers increased their import purchases of men's trousers.

Wyoming Valley Garment's sales decreased in 1978 compared to 1977. The average number of workers and the average number of hours worked both declined in 1978 compared to 1977.

U.S. Imports of men's trousers increased from 73.2 million units in 1976 to 76.4 million units in 1977. U.S. imports of men's trousers increased absolutely 90.8 million units in 1978. The ratio of imports to domestic production decreased from 40.9 percent in 1976 to 38.0 percent in 1977.

Conclusion

Based on additional evidence, a review of the entire record and in accordance with the provisions of the Act, I made the following revised determination:

All workers of the Wilkes-Barre, Pennsylvania, plant of the Wyoming Valley Garment Co., Inc., who became totally or partially separated from employment on or after March 19, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 24th day of July 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-23593 Filed 7-30-79; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Opera-Musical Theater Advisory Panel; Meeting; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel to the National Council on the Arts will be held August 18, 1979, from 3:00 p.m. to 5:00 p.m., August 19, 1979, from 9:30 a.m. to 6:30 p.m., August 20 and 21, 1979, from 8:30 a.m. to 6:00 p.m., and August 22, 1979, from 8:30 a.m. to 5:00 p.m., in the Trustees' Room, fourth floor, War Memorial Opera House, San Francisco, California.

A portion of this meeting will be open to the public on August 18, 1979, from 3:00 p.m. to 5:00 p.m., and August 19, 1979, from 10:30 a.m. to 11:30 a.m. The August 18th open session will include an "Ask the Opera-Musical Theater Program Workshop".

The remaining sessions of this meeting on August 19, 1979, from 9:30 a.m. to 10:30 a.m., and from 11:30 a.m. to 6:00 p.m., August 20, 1979, from 8:30 a.m. to 6:00 p.m., August 21, 1979, from 8:30 a.m. to 6:00 p.m., and August 22, from 8:30 a.m. to 5:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

July 23, 1979.

[FR Doc. 79-23489 Filed 7-30-79; 8:45 am]

BILLING CODE 7537-01-M

Folk Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Folk Arts Advisory Panel to the National Council

on the Arts will be held August 24 and 25, 1979, from 9:00 a.m. to 5:30 p.m., in room 1422, Columbia Plaza, 2401 E Street, NW., Washington, D.C.

A portion of this meeting will be open to the public on August 25, 1979, from 9:00 a.m. to 5:30 p.m. The topic of discussion will be Policy.

The remaining sessions of this meeting of August 24, 1979, from 9:00 a.m. to 5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

July 23, 1979.

[FR Doc. 79-23490 Filed 7-30-79; 8:45 am]

BILLING CODE 7537-01-M

National Council on the Humanities Advisory Committee; Meeting

July 26, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given that a meeting of the National Council on the Humanities will be conducted at Washington, D.C. on August 15-17, 1979.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Shoreham Building, 806 15th Street NW., Washington, D.C. Because the sessions of the proposed meeting on August 16, 1979 and the afternoon session on August 17, 1979 will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views to avoid interference with operation of the committee.

The session on August 15, 1979 will consist of committee meetings to discuss program guidelines and will be open to the public. The committees will convene at 2 p.m. in the rooms listed below:

Education Programs—Room 807
Fellowship Programs—Room 314
Planning & Special Programs—Room 1025
Public Programs & State Programs—1st Floor Conference Room
Research Programs—Room 1130

The morning session on August 17, 1979 will convene at 8:30 a.m. in the 1st Floor Conference Room and will be open to the public. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting

Reports
A. Introductory Remarks
B. Program Review and Introduction of New Staff
C. Remarks
D. Chairman's Grants & Grants Departing from Council Recommendation
E. Application Report
F. Gifts and Matching Report
G. FY 1979 Program Funds
H. FY 1980 Appropriation Request
I. FY 1981 Budget Request
J. Reauthorization
K. Dates of Future Council Meetings
L. Jefferson Lecture Eligibility
M. Cost-Sharing Study

The sessions on August 16, 1979 and the afternoon session on August 17, 1979 will be devoted to the discussion of specific grant applications and will be closed to the public. On August 16, 1979 there will be a meeting in Room 1001 from 8 to 9:30 a.m.; there will be committee meetings in the rooms listed below from 9:30 a.m. to 4:30 p.m. to discuss applications in the following programs:

Education Programs—Room 807
Fellowship Programs—Room 314
Planning & Special Programs—Room 1025
Public Programs & State Programs—1st Floor Conference Room
Research Programs—Room 1130

The afternoon session on August 17, 1979 will be closed to the public.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 79-23547 Filed 7-30-79; 8:45 am]

BILLING CODE 7536-01-M

OFFICE OF MANAGEMENT AND BUDGET

Federal Aid Reform; Opportunity to Comment on Federal Flow Charts

This notice offers interested parties an opportunity to comment on flow charts that show the review and approval process for a sample of Federal aid programs. If the sample flow charts appear to be useful, additional ones will be developed.

A White House Status Report, *Federal Aid Simplication,* dated September 1978, disclosed that grant recipients are often unable to determine the status of grant applications, or to understand the review and approval processes of many Federal aid programs. The report further stated that agency staffs are often unable to describe the review process themselves, or to assist applicants in tracking a grant application. The report recommended that each agency produce a one-page "road map" or flow chart for each federally assisted program, for inclusion as part of the grant application.

The flow charts presented here show the review and approval process for a sample of programs of the Department of Health, Education, and Welfare. Comments are solicited as to whether it would be useful for all Federal agencies to prepare similar "road maps" or flow charts for other programs shown in the *Catalog of Federal Domestic Assistance.* Views are also solicited on the layout of each flow chart, the clarity, and the amount of detail presented. Comments on the proper method of disseminating this information are also sought.

Comments should be submitted in duplicate to the Financial Management Branch, Budget Review Division, Office of Management and Budget, Washington, D.C. 20503. Contact person: John J. Lordan (202) 395-6823. All comments should be received on or before September 1, 1979.

Velma N., Baldwin,

Assistant to the Director For Administration.

BILLING CODE 3110-01-M

13.950 EDUCATIONAL RESEARCH AND DEVELOPMENT

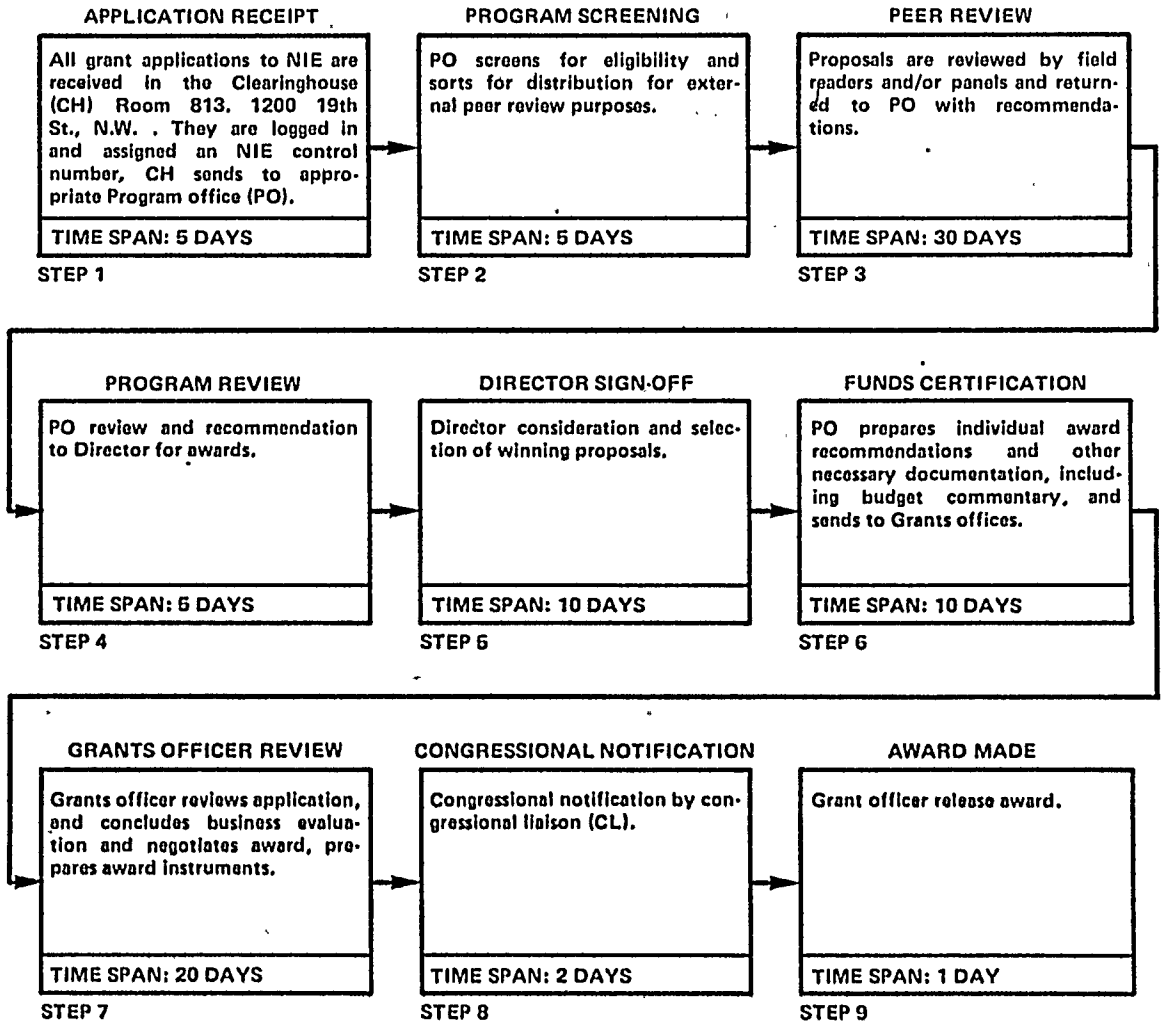
FEDERAL AGENCY: NATIONAL INSTITUTE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

AUTHORIZATION: Section 405 of the General Education Provisions Act as amended by the Education Amendments of 1976, Public Law 94-482; 20 U.S.C. 1221e.

OBJECTIVES: To improve education in the United States, so that every person is provided an equal opportunity to receive an education of high quality, regardless of race, color, religion, sex, age, national origin or social class through concentrating the resources of the Institute on priority research and development need relating to: helping solve or alleviate the problems of, and achieve the objectives of American education; advancing the practice of education as an art, science, and profession; strengthening the scientific and technological foundations of education; and building an effective educational research and development system. The Congress has identified the following priority research and development needs on which the Institute's contracts and grants are mostly focussed: 1) improvement in student achievement in the basic educational skills, including reading and mathematics; 2) overcoming problems of finance, productivity, and management in educational institutions; 3) improving the ability of schools to meet their responsibilities to provide equal educational opportunities for students of limited English-speaking ability, women, and students who are socially, economically or educationally disadvantaged, 4) preparation of youth and adults for entering and progressing in careers; 5) improved dissemination of the results of, and knowledge gained from educational research and development, including assistance to educational agencies and institutions in the application of such results and knowledge.

TYPES OF ASSISTANCE: Project Grants, Research Contracts.

PROGRAMS OF EDUCATION RESEARCH AND DEVELOPMENT



13.612 NATIVE AMERICAN PROGRAMS

FEDERAL AGENCY: OFFICE OF HUMAN DEVELOPMENT SERVICES, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

AUTHORIZATION: 42 U.S.C. 2991 et seq.; Title VIII, Community Services Act of 1974, Public Law 93-644; as amended by Public Law 95-568.

OBJECTIVES: To promote the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, and Alaskan Natives.

TYPES OF ASSISTANCE: Project Grants (Contracts).

13.626 REHABILITATION SERVICES AND FACILITIES—SPECIAL PROJECTS

(Rehabilitation Services Projects)

FEDERAL AGENCY: OFFICE OF HUMAN DEVELOPMENT SERVICES, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

AUTHORIZATION: Rehabilitation Act of 1973, Public Law 93-112, Sections 112, 120, 301(b)(c), 302(b) (c), 304(b) (2), 304(b)(3), 304(c)(d), 304(e) 305, Public Law 94-230 (1976); 29 U.S.C. 701.

OBJECTIVES: To provide funds to State vocational rehabilitation agencies and public or nonprofit organizations for projects and demonstrations which hold promise of expanding and otherwise improving services for the mentally and physically handicapped over and above those provided by the Basic Support Program Administered by states.

TYPES OF ASSISTANCE: Project Grants (Contracts).

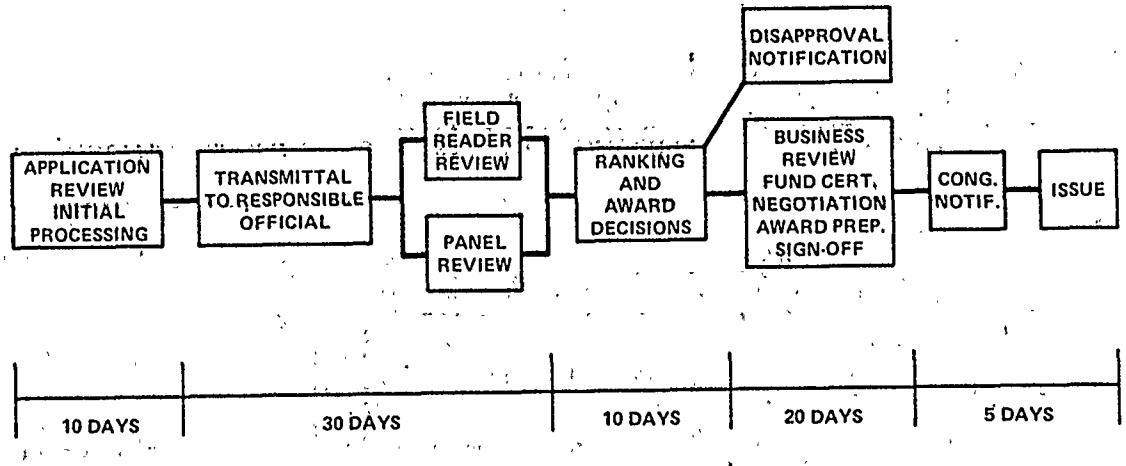
13.623 ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES—RUNAWAY YOUTH

FEDERAL AGENCY: OFFICE OF HUMAN DEVELOPMENT SERVICES, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

AUTHORIZATION: The Juvenile Justice and Delinquency Prevention Act, Title III; Public Law 93-415; 42 U.S.C. 5701, as amended.

OBJECTIVES: To develop local facilities to address the immediate needs of runaway youth.

TYPES OF ASSISTANCE: Project Grants.



Length of time is average and varies depending upon the number of applications to be reviewed, availability of reviewers and need for negotiations with applicants.

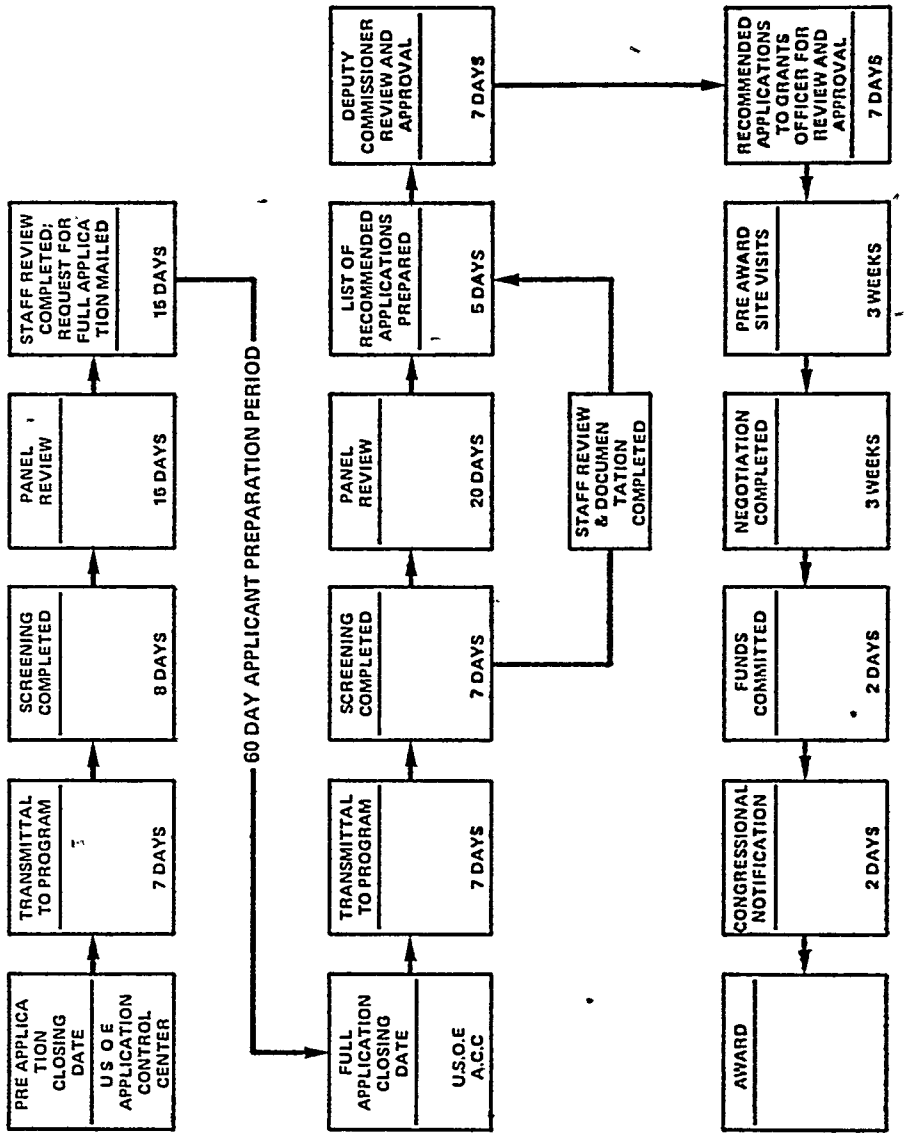
13 522 ENVIRONMENTAL EDUCATION

FEDERAL AGENCY: OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

AUTHORIZATION: Environmental Education Act, Public Law 91 516 as amended by Public Law 93 278 (20 U S C 1531 1536 reauthorized by Public Law 95 561, Section 301; 20 U S C 3011 3018

OBJECTIVES: To improve public understanding of environmental issues as they relate to the quality of life

TYPES OF ASSISTANCE: Project Grants



13 478 SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS—MAINTENANCE AND OPERATION

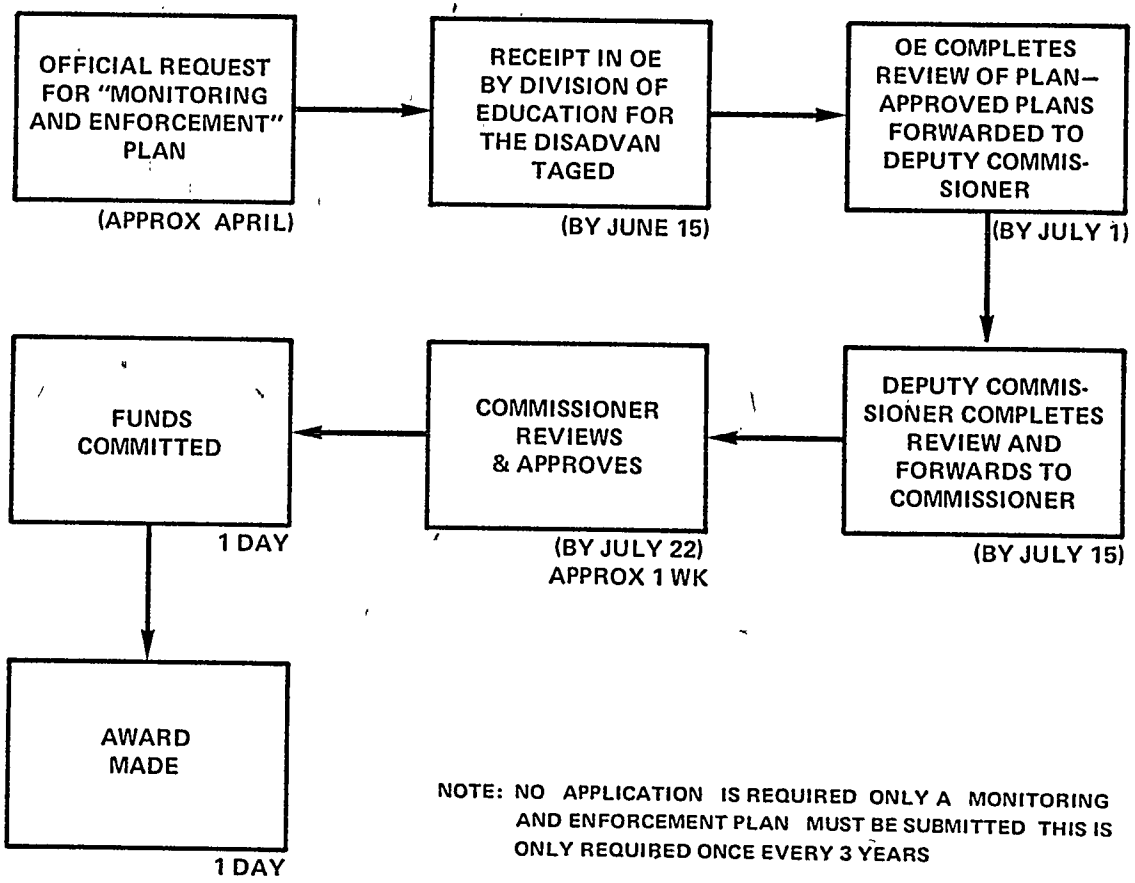
(Impact Aid)

FEDERAL AGENCY: OFFICE OF EDUCATION DEPARTMENT OF HEALTH EDUCATION AND WELFARE

AUTHORIZATION: Federally Impacted Areas Title I and IV of Public Law 81 874 as amended by Public Law 93 380; 20 U S C 236 241 1 242 245

OBJECTIVES: To provide financial assistance to local educational agencies upon which financial burdens are placed; due to Federal Activity where tax base of a district is reduced through the Federal acquisition of real property; sudden and substantial increase in school attendance as the result of Federal activities; education for children residing on Federal property; or children whose parents are employed on Federal property or in the Uniformed Service To provide major disaster assistance by replacing repairing damaged or destroyed supplies, equipment or facilities To provide assistance for the education of children residing with a parent who at any time during the 3 year period preceding the fiscal year of application was a refugee meeting requirements of the Migration and Refugee Assistance Act of 1962 provided payment was not made under Section 2(b)(4) of that Act

TYPE OF ASSITANCE: Formula Grants



NOTE: NO APPLICATION IS REQUIRED ONLY A MONITORING AND ENFORCEMENT PLAN MUST BE SUBMITTED THIS IS ONLY REQUIRED ONCE EVERY 3 YEARS

13 499 VOCATIONAL EDUCATION—SPECIAL NEEDS

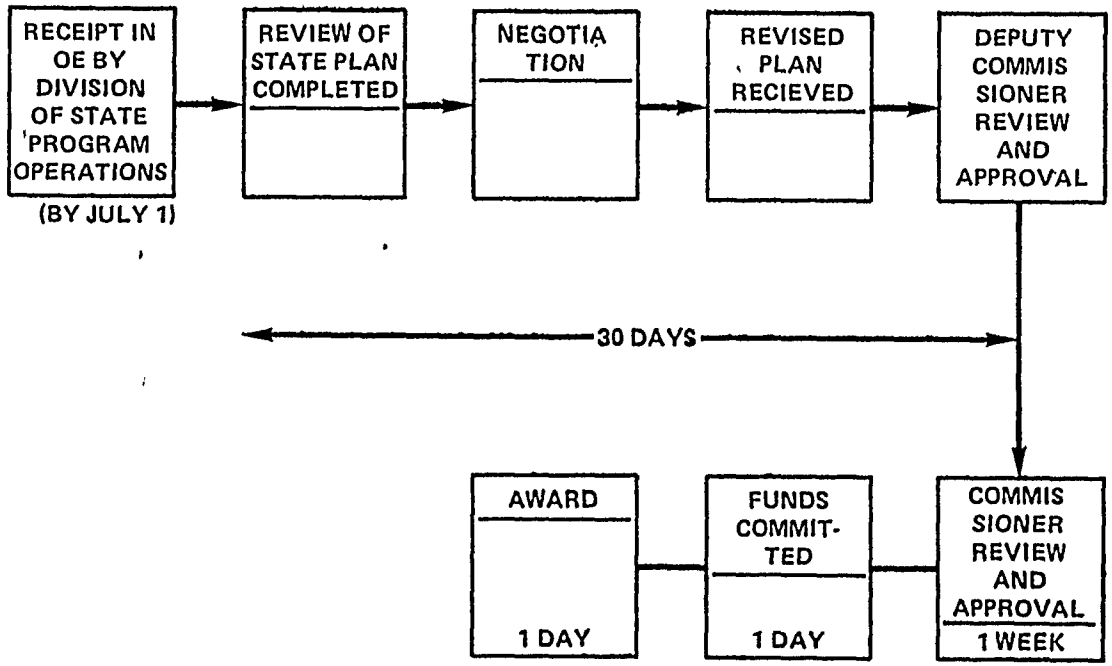
(Special Program for Disadvantaged)

FEDERAL AGENCY: OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

AUTHORIZATION: Vocational Education Act of 1963, as amended by Title II of the Education Amendments of 1976, Public Law 94 482; 20 U S C 2370; 90 Stat 2195

OBJECTIVES: To provide vocational education special programs for persons who have academic, or economic handicaps and who re quire special services and assistance in order to enable them to succeed in vocational education programs

TYPES OF ASSISTANCE: Formula Grants



13 444 HANDICAPPED EARLY CHILDHOOD ASSISTANCE

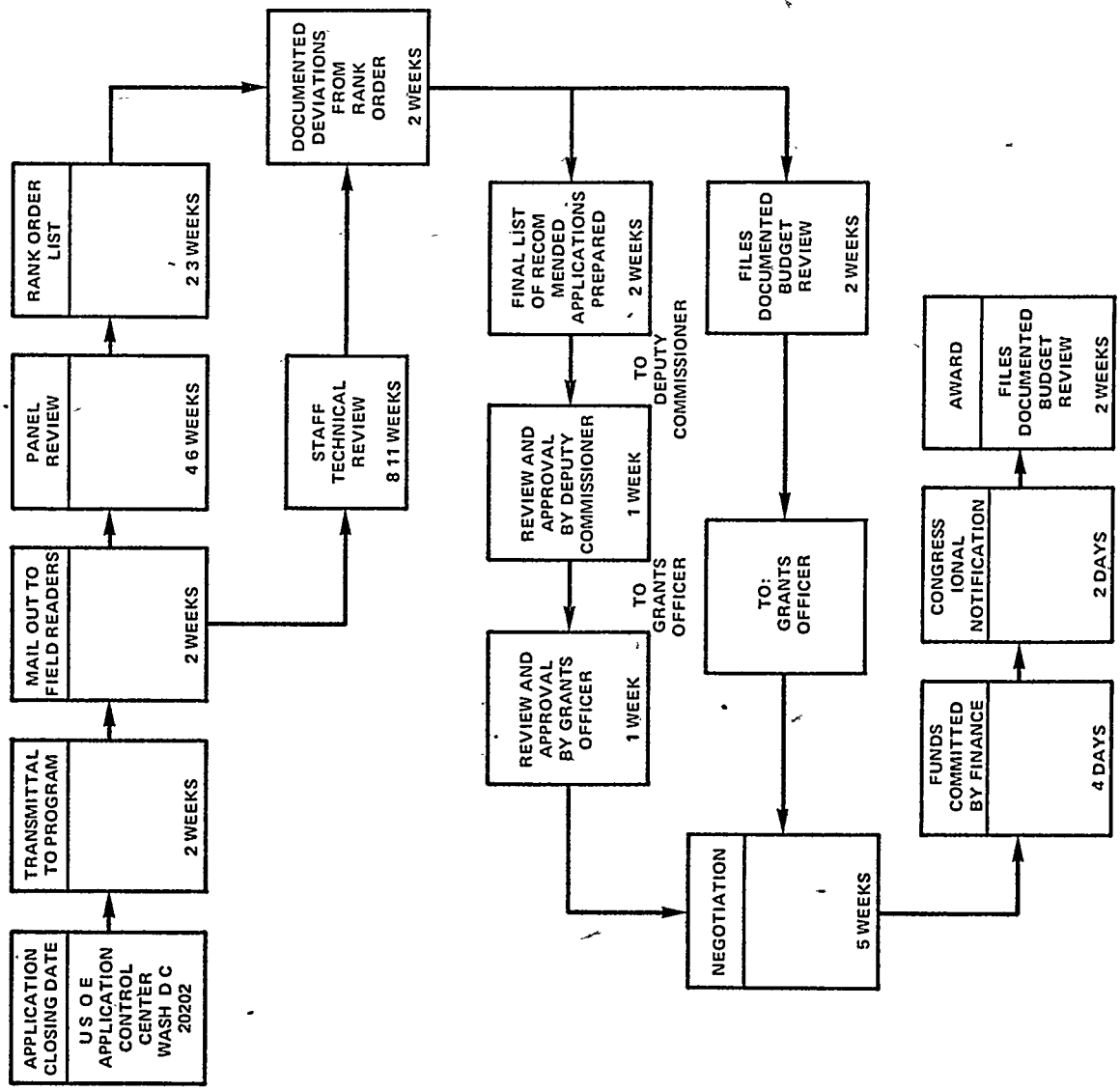
(Early Education Program)

FEDERAL AGENCY: OFFICE OF EDUCATION DEPARTMENT OF HEALTH EDUCATION AND WELFARE

AUTHORIZATION: Education of the Handicapped Act Public Law 91 230 Title VI Part C, 20 U S C 1423 as amended by Public Law 95 49

OBJECTIVES: To support experimental demonstration outreach and State implementation of preschool and early childhood projects for handicapped children

TYPES OF ASSISTANCE: Project Grants



13 217 FAMILY PLANNING PROJECTS

FEDERAL AGENCY: HEALTH SERVICES ADMINISTRATION PUBLIC HEALTH SERVICES, DEPARTMENT OF HEALTH EDUCATION, AND WELFARE

AUTHORIZATION: Public Health Service Act as amended, Public Law 95 83, Title X, Section 1001, 42 U S C 300

OBJECTIVES: To provide educational, comprehensive medical and social services necessary to enable individuals to freely determine the number and spacing of their children to promote the health of mothers and children and to help reduce maternal and infant mor tality

TYPES OF ASSISTANCE: Project Grants

13 224 COMMUNITY HEALTH CENTERS

(Public Health Service Act, Section 330)

FEDERAL AGENCY: HEALTH SERVICES ADMINISTRATION, PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH EDUCATION, AND WELFARE

AUTHORIZATION: Section 330, Public Health Service Act; Public Law 95 626 as amended by Title I; Public Law 95 83 as amended by Title V; Public Law 94-63; 42 U S C 254C; (Previously Public Health Service Act, Title III, Section 314(e); as amended by Sec tion 3 of the Comprehensive Health Planning and PHS Amend ments of 1966; Public Law 89 749; Section 2 of the Partnership for Health Amendments of 1967; Public Law 90 174; and Title II of the 1970 Amendments to PHS Act; Public Law 91 515)

OBJECTIVES: To support the development and operation of commu nity health centers which provide primary health services, supple mental health services and environmental health services to medi cally underserved populations. In 1979 priorities will be focused on capacity building in medically underserved areas and mainte nance of existing centers, expansion of population and service cov erage in existing centers, monitoring and assessment of project performance, development and implementation of mechanisms for improving quality of care, and maximizing third party reimburse-ment levels through improved project administration and manage-ment

TYPES OF ASSISTANCE: Project Grants.

13 246 MIGRANT HEALTH GRANTS

FEDERAL AGENCY: HEALTH SERVICES ADMINISTRATION PUBLIC HEALTH SERVICE DEPARTMENT OF HEALTH EDUCATION AND WELFARE

AUTHORIZATION: Public Health Service Act Title III Section 329 Public Law 95 626 42 U S C 247d

OBJECTIVES: To support the development and operation of migrant health centers and projects which provide primary ambulatory and in patient health services supplemental health services and en vironmental health services which are accessible to people as they move and work to migrant agricultural farm workers seasonal farm workers and their families

TYPES OF ASSISTANCE: Project Grants (Contracts)

Days Prior to Beginning Date of Budget Period	
120	Simultaneous submission of application to PHS awarding component, Health Systems Agency, and A 95 Clearinghouses
110 60	Receipt of application by awarding component, logging in, establishment of grant file, review by grants management office for completeness and arithmetical accuracy, duplication of application for reviewers, business evaluation of applicant's financial management capability, requesting and receiving from applicant any missing informa tion, pre-evaluation site visits to applicant as may be necessary
67	Receipt of comments from HSA and A 95 Clearinghouses A 95 comments may have been received at Day 90 if Notice of Intent procedure was used
67-30	Programmatic review, objective review of application (Objective review may not take place until the expiration of the 67-day comment period or the receipt of HSA and A 95 comments, whichever comes first) Negotiation with applicant, if necessary, regarding issues raised during objective review
20 10	If RHA decision is to approve award of grant, preparation of approval list and NGA, certification by Obligation Control Point of availability of funds, signature by RHA on approval list (as appropriate under individual regional office review procedures), notification of pending award to Congressional Liaison Office
10	Issuance of NGA to grantee
5	Notification of award action to A 95 clearinghouses, SCIRAs, HSAs
0	Begin date of grant budget period

13 210 COMPREHENSIVE PUBLIC HEALTH SERVICES FORMULA GRANTS

(314(d) Formula Grants to State Health and Mental Health Authorities)

FEDERAL AGENCY: HEALTH SERVICES ADMINISTRATION PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH EDUCATION AND WELFARE

AUTHORIZATION: Public Health Service Act, Title III, Section 314(d) as amended; 42 U S C 246

OBJECTIVES: To assist State health authorities in meeting the cost of providing comprehensive public health services

TYPES OF ASSISTANCE: Formula Grants (Health Incentive Grants)

Milestones

July 1 15	PHS regional office representatives meet with appropriate state agency staff for the purpose of physically locating, identifying and reviewing specific documents incorporated by reference into state plan After acceptance of state plan documents by PHS, state agency prepares a State Plan Certification
July 15	State agency submits State Plan Certification to the Governor for his review and approval (45 days allowed), and to the Statewide Health Coordinating Council (SHCC) (60 days allowed)
September 1	Submission of State Plan Certification to PHS regional office
September 15	Receipt of comments by SHCC
September 5 15	Regional office advises state agency of any change in amount of allotment
September 20	State agency submits budget to regional office
September 25	Preparation of Notice of Grant Award (NGA), approval list, and notification to Congressional Liaison Office
October 1	Issuance of NGA (contingent upon availability of funds)

13 633 SPECIAL PROGRAMS FOR THE AGING—STATE AGENCY ACTIVITIES AND AREA PLANNING AND SOCIAL SERVICE PROGRAMS

(Aging Programs—Title III State Agency Activities and Area Planning and Social Service Programs)

FEDERAL AGENCY: OFFICE OF HUMAN DEVELOPMENT SERVICES, DEPARTMENT OF HEALTH EDUCATION, AND WELFARE

AUTHORIZATION: Older Americans Act of 1965 Public Law 89 73, as amended by Public Laws 90 42, 91 69 92 258, 93 29, 93 351, and 94-135, Title III; Section 301, 87 Stat 36-45, 42 U S C, 3021 3025

OBJECTIVES: To provide assistance to State and area organizations for support of programs for older persons via statewide planning area planning and social services

TYPES OF ASSISTANCE: Formula Grants

The following is the procedure taken by Regional Offices when receiving State Plans from their states: (Due in Regional Office August 13, 1979)

- Log in for date and time
- Check for standard format with appropriate copies
- Team review to conduct analysis of overall Plan content to assure compliance, assurances, waivers, etc
- Recommendation for approval with or without conditions by the Regional Program Director
- Forward to Central Office

When the State Plans are received in Central Office, the following steps are taken by the Office of Program Operations and the Office of Program Development before being forwarded to the Commissioner: (Due in C O 9/1/79)

- Log in for date and time
- Check on completeness of material submitted
- Check on overall Plan content
- Check for compliance, assurances, waivers, etc
- If in compliance, State Plans are then forwarded to the Commissioner for his review and approval
- After approval by the Commissioner, State Plans are returned to the Office of Program Operations for mailing by approval letter to the respective states before October 1, 1979

13 775 STATE MEDICAID FRAUD CONTROL UNIT

FEDERAL AGENCY: OFFICE OF THE INSPECTOR GENERAL
AUTHORIZATION: Social Security Act Title XIX Section 1903 and Section 17 of Public Law 95 142
OBJECTIVES: To control fraud in the States Medicaid program
TYPES OF ASSISTANCE: Formula Grants
USES AND USE RESTRICTIONS: Provides 90 percent matching funds for investigation and prosecution of fraud in statewide Medicaid programs The unit must be separate and distinct from the State Medicaid agency Authority for this program expires October 1, 1980

	Time Involved
Application submitted by State/received by OIG	—
Reviewed by OIG/Division of State Fraud Control	2 weeks
Changes in application required by statutes or regulations as well as questionable budget items are negotiated with State	4 weeks
On site review	1 week
Approval of Grant application by OIG	1 day
Congressional notification	3 days
Award letter submitted to HEW obligation control point	2 days
Award letter to State	—

13 814 REFUGEE ASSISTANCE—INDOCHINESE REFUGEES

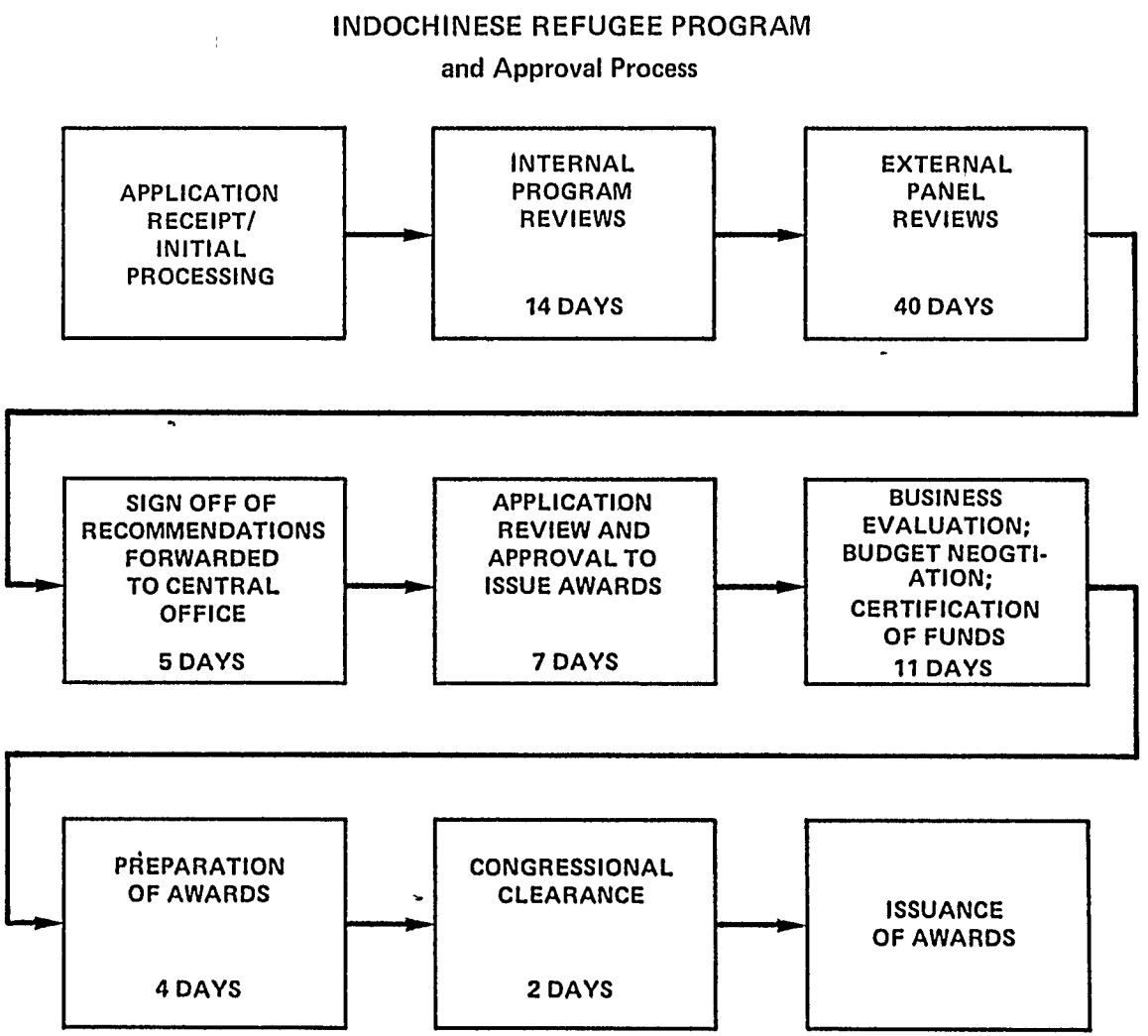
(Refugee Assistance—Indochinese Refugees)

FEDERAL AGENCY: SOCIAL SECURITY ADMINISTRATION DEPARTMENT OF HEALTH EDUCATION, AND WELFARE

AUTHORIZATION: The Indochina Migration and Refugee Assistance Act of 1975; Public Law 94 23; 22 U S C 2601; as amended by Public Laws 94 313, 95 145; and 95 549; 42 U S C 601; 91 Stat 1223

OBJECTIVES: To help refugees from Cambodia Vietnam and Laos resettle throughout the country by funding through State and local public assistance agencies maintenance and medical assistance and social services for needy refugees; and to provide grants for special employment training and related projects

TYPES OF ASSISTANCE: Direct Payments with Unrestricted Use



[FR Doc. 79-23559 Filed 7-30-79; 8:45 am]
BILLING CODE 3110-01-C

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Proposed New Routine Use

Correction

In FR Doc. 79-22886 appearing at page 43375 in the issue for Tuesday, July 24, 1979, the routine use being added at that time was incorrectly designated paragraph "x". A previous paragraph "x" had been published at 42 FR 29768, Tuesday, May 22, 1979. The routine use added at 44 FR 43375 should have been an undesignated paragraph immediately following the previously designated paragraph "x". The routine uses section should read as follows:

CSC/GOVT-3

SYSTEM NAME:

General Personnel Record-SCS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be:

a. Used in the selection process by the agency maintaining the record in connection with appointments, transfers, promotions, or qualifications determinations. To the extent relevant and necessary, it will be furnished upon request to other agencies for the same purpose.

b. Disclosed to other Government agencies maintaining relevant enforcement or other information if necessary to obtain from these agencies information pertinent to decisions regarding hiring or retention.

c. Disclosed to prospective employers or other organizations, at the request of the individual.

d. Disclosed to officials of foreign governments for clearance before employee is assigned to that country.

e. Disclosed to educational institutions for training purposes.

f. Disclosed to the Department of Labor; Veterans Administration; Social Security Administration; Department of Defense; Federal agencies who may have special civilian employee retirement programs; national, State, county, municipal, or other publicly recognized charitable or social security administration agency to adjudicate a claim for benefits under the Bureau of Retirement, Insurance, and Occupational Health's or the recipient's benefit program(s), or to conduct an analytical study of benefits being paid under such program.

g. Disclosed to health insurance carriers contracting with the Commission to provide a health benefits plan under the Federal Employees' Health Benefits Program, to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination of benefits, provisions of such contracts.

h. Disclosed to Federal Employees' Group Life Insurance Program in support of an individual's claim for life insurance benefits.

i. Disclosed to labor organizations in response to requests for names of employees and identifying information.

j. If information indicates a possible violation of law, it may be disclosed to law enforcement agencies.

k. Disclosed to district courts to render a decision when an agency has refused to release to current or former Federal employees a record under the Freedom of Information Act.

l. Disclosed to district courts for use in rendering a decision when an agency has refused to release a record to the individual under the Freedom of Information Act (FOIA).

m. Used to provide statistical reports to Congress, agencies, and the public on characteristics of the Federal workforce.

n. Used in the production of summary descriptive statistics and analytical studies. The records may be used to respond to general requests for statistical information (without personal identifier) under FOIA; or to locate individuals for personnel research or other personnel research functions.

o. Disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

p. Disclosed to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order where there is an indication of a violation or potential violation of civil or criminal law or regulation.

q. Disclosed to an agency upon request for determination of an individual's entitlement to benefits in connection with Federal Housing Administrative programs.

r. To provide information to a congressional office from the record of an individual in response to an inquiry from a congressional office made at the request of that individual.

s. Used to provide an official of another Federal agency any information he or she needs to know in the performance of his or her official duties related to reconciling or reconstructing data files, compiling descriptive statistics, and making analytical studies in support of the personnel functions for which the records were collected and are maintained.

t. Disclosed to officials of labor organizations recognized under Executive Orders 11636 and 11491, as amended, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

u. Used to select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee awards or honors.

v. Disclosed to another Federal agency or to a court when the Government is party to a suit before the court.

w. To disclose specific Civil Service employment information required under law by the Department of Defense on individuals identified as members of the Ready Reserve, to assure continuous mobilization readiness of Ready Reserve units and members.

x. To disclose to a requesting agency the home address and other relevant information concerning those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from a health hazard while employed in the Federal workforce.

To disclose the name, date of birth, Social Security Number, salary, work schedule, and duty station location of Federal employees as of March 31, 1979, to the Department of Health, Education, and Welfare in connection with that agency's Aid to Families with Dependent Children (AFDC) matching program. Pursuant to Pub. L. 94-505, the Department of Health, Education, and Welfare is conducting a matching program to reduce fraud and unauthorized payments in Federal programs, and to collect debts owed to the Federal government. This routine use will be operative for a limited period of six months from its effective date.

* * * * *

BILLING CODE 6325-01-M

POSTAL RATE COMMISSION

[Docket No. MC78-3]

Electronic Mail Classification Proposal, 1978; Inquiry Regarding Issues of Privacy and Mail Security

Issued: July 26, 1979.

The Commission believes that a significant issue in the decision in this

docket is the question of what measures may be taken to insure the privacy of electronic mail. The issue appears to us to be principally one of law and policy, given the existing laws and regulations on the subject: 39 U.S.C. 3623(d) provides for the creation of classes of letter mail sealed against inspection, various criminal statutes protect the mails against tampering, [1] and the Federal Communications Commission administers certain regulations requiring telegraph carriers to preserve copies of all messages sent.[2] We therefore believe it is appropriate for the parties to address these questions by legal and policy memoranda.

A Postal Service witness has stated that E-COM is intended to be a subclass of first-class mail. *See* Tr. 8/1950-54. Presumably, this view implies that E-COM messages would be accorded the same security against postal inspection or other intrusion as ordinary first-class letters. It may also be true, as a matter of policy, that, to the extent E-COM or some other form of electronic mail service tends to replace ordinary first-class letter service, the expectations of mail recipients that letters addressed to them will remain closed against inspection—as ordinary first-class letters are today—should be honored.

We therefore invite the legal and policy comments of all interested parties on the matters just referred to, as well as on the following general questions:

1. In the E-COM proposal as advanced by the Service, is the access which postal employees may have to the text of E-COM messages during processing in the SPOs inconsistent with the degree of privacy accorded first-class letters? Should special safeguards be adopted? Will the access situation change following the Service's proposed prelminary phase of E-COM?

2. What requirements in respect of sealing against inspection should apply to E-COM messages while they are in the hands of the telecommunications carrier?

a. If it were held that E-COM messages are first-class letters *ab initio*—that is, from the time the sender places them in the hands of the telecommunications carrier—is it desirable and feasible to make them subject to all the legal protections accorded to first class letter mail?

b. If E-COM messages are deemed first-class letters *ab initio*, is it possible, or desirable, to distinguish between the effect of laws and regulations protecting the privacy of such messages and the effect of the Private Express Statutes [18 U.S.C. 1694 *et seq.*; 39 U.S.C. 601 *et seq.*]? That is, can a message, as a matter of law, be considered a first-class letter for purposes of one set of statutes but not for the other?

c. If it were held that E-COM messages become "letters" only when reduced to hard copy at the SPO, what measures could and should be taken to assure similar privacy against inspection at earlier stages of their transmission?

3. The questions posed above deal with privacy of E-COM messages during their tramsmission from sender to recipient. A separate question is raised by the potential existence of banks of E-COM message data generated by the journaling and archiving (whether voluntary or under FCC requirements) of messages by the telecommunications carrier.

a. Do privacy interests require that journaling and archiving procedures not be applied to E-COM messages? That they be modified or provided with safeguards against access?

b. What interests are served by journaling and archiving? Can the two processes be separated, and, if so, would journaling alone be sufficient to serve the purposes underlying the practice?

c. What are the precise regulatory requirements administered by the FCC with respect to journaling and archiving, and to what types of telecommunications transmissions do they apply?

While we invite all parties to comment on these questions—as well as any other issues which they believe are germane to the general subject of message privacy and to the other issues in this case—we are mindful of the fact that the treatment of messages in the hands of telecommunications carriers is a matter peculiarly within the expertise of the FCC. We therefore particularly invite the FCC's comments on the matters addressed in question 3 above.

Because of broad general interest in questions of privacy, we are giving this Notice a wider circulation through publication in the Federal Register. The attention of interested persons not parties to this case is called to § 19b of our rules of practice (39 CFR 3001.19b), permitting the filing of non-record comments.

The Commission orders:

(A) All parties are invited to file legal and policy memoranda on the subjects addressed by this Notice of Inquiry on or before August 17, 1979.

(B) Reply memoranda shall be filed on or before August 24, 1979.

(C) The Secretary shall publish this Notice promptly in the Federal Register.

By the Commission.

David F. Harris,

Secretary.

[FR Doc. 79-23607 Filed 7-30-79; 8:45 am]

BILLING CODE 7715-01-M

[1] *See* 18 U.S.C. 1702, 1703, 1708.

[2] *See* 47 CFR Part 42, especially § 42.9.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21159; 70—6334]

American Electric Power Co., Inc.; Proposed Issuance and Sale of Common Stock Pursuant to Underwritten Rights Offering

July 25, 1979.

Notice is hereby given that American Electric Power Company, Inc. ("AEP"), 2 Broadway, New York, New York 10004, a registered holding company, has filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, and 12(c) of the Act and Rules 42 and 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

AEP purposes to offer to the holders of its common stock outstanding as of the close of business on September 6, 1979, or such later date as the post-effective amendment to its registration statement under the Securities Act of 1933 may become effective (the "Record Date"), the following:

(i) The right to subscribe ("Rights") for shares of AEP's authorized but unissued common stock on the basis of one share for each fifteen shares held on the Record Date.

(ii) To each shareholder owning a number of shares not evenly divisible by fifteen, the right to subscribe for such fractional interest as, when added to his terminal fraction, will enable him, subject to allotment if necessary, to purchase (the "Step-up Privilege") one additional full share of AEP's authorized but unissued common stock. The total number of authorized but unissued shares representing the fractional interests to be offered to shareholders is 8,000,000, less the number of shares required under (i) above. If additional shares are required to meet the Step-up Privilege, they are to be made available from shares not subscribed for pursuant to the exercise of Rights. (Such 8,000,000

authorized but unissued shares, together with any outstanding shares of AEP common stock (not exceeding 800,000 shares) as may be acquired by AEP pursuant to stabilizing activities described further below, hereinafter referred to as the "Additional Common Stock".)

(iii) The privilege to subscribe (the "Over-Subscription Privilege") for any number of shares of the Additional Common Stock not subscribed for through the exercise of Rights or the Step-up Privilege, subject to allotment among those who exercise the Oyer-Subscription Privilege, proportionately, on the basis not of the number of shares they request but of the number of shares they purchase pursuant to exercise of Rights and Step-up Privilege.

The subscription price will be determined by AEP's Board of Directors, or by a Committee of such Board duly authorized by it, late in the day of the anticipated Record Date, and is expected to be not more than 100%, and not less than 90%, of the reported closing price of AEP common stock on the New York Stock Exchange on such date.

Each record holder of AEP common stock will receive, as soon after the Record Date as is practicable, a transferable subscription warrant ("Warrant") representing the number of Rights to which he is entitled. Each Warrant may be transferred, divided or combined with other Warrants, but may not be subdivided in such a manner as to entitle the holder to subscribe to a greater number of shares than permitted by the original Warrant. AEP expects that subscription Rights will be traded on the New York Stock Exchange and that they may be bought and sold through banks or brokers. AEP also proposes to afford to holders of Warrants the opportunity to buy or sell Rights through AEP's subscription agent, such agent to charge two cents per Right for its services.

The subscription offer will expire at the close of business on the Warrant expiration date, presently planned to be September 28, 1979 (assuming a Record Date of September 6, 1979).

AEP does not intend to mail Warrants to stockholders whose registered addresses are outside the United States, Canada and Mexico. To the extent that AEP does not receive instructions from such stockholders to either exercise or otherwise dispose of their Warrants, AEP may sell the Rights evidenced by such Warrants, as well as the Rights evidenced by Warrants which are returned to the subscription agent after the initial mailing as nondeliverable for any reason. AEP will, if such Rights are sold, within 30 days following the fifth anniversary of such sale, pay any of the net proceeds then remaining unclaimed (as the same may have been reduced by the deduction of fees for the administration of such funds) pursuant to any applicable provisions of the Adandoned Property Law of New York.

In connection with the subscription rights offering, AEP anticipates that it may effect stablizing transactions in order to maintain the market price of its common stock and/or the Rights at levels above those which might otherwise prevail in an open market. AEP states that it will acquire no more than 800,000 shares of its common stock pursuant to these stabilizing activities.

AEP further proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, such of the shares of the Additional Common Stock as are not purchased pursuant to the subscription offer. The subscription price, which will also be the price to be paid by the successful bidder or bidders, will be set by AEP shortly before the time written proposals are to be submitted. The aggregate amount to be paid by AEP to the successful bidder or bidders for their commitments and obligations under the purchase contract will be determined by competitive bidding. The purchase contract will obligate the purchasers to make a public offering of the shares promptly after the Warrant expiration date.

The proceeds from the sale of the shares of Additional Common Stock are to be used to repay AEP's short-term indebtedness and to make additional investments in AEP's operating subsidiaries. At June 30, 1979, AEP had outstanding $110,430,000 of short-term debt.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than August 17, 1979, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that to be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above stated address, and proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-23565 Filed 7-30-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21155; 70-5899]

Columbia Gas System, Inc.; Proposal To Issue Common Stock Pursuant to a Tax Reduction Employee Stock Ownership Plan

July 23, 1979.

Notice is hereby given that The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed a post-effective amendment to a declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended declaration for a complete statement of the proposed transaction.

By orders dated October 4, 1976 and August 10, 1978 (HCAR Nos. 19704 and 20666) in this matter the Commission authorized Columbia to issue up to 125,000 shares of its common stock pursuant to its Tax Reduction Employee Stock Ownership Plan ("TRESOP") during the years 1976 and 1977 with respect to the tax years 1975 and 1976 and up to 400,000 shares during the years 1978 through 1981 with respect to the tax years 1977 through 1980. Section 301 of the Tax Reduction Act of 1975

created the special one percent investment tax credit which funds the TRESOP. That tax credit was extended through the 1980 tax year by the Tax Reform Act of 1976 and has now been extended through the 1983 tax year by the Revenue Act of 1978. Columbia proposes to continue to contribute to the TRESOP amounts equal to the special one percent investment tax credit in the form of its authorized but unissued common stock.

Accordingly, Columbia seeks authorization to issue its authorized but unissued common stock pursuant to its TRESOP with respect to the tax years 1978 through 1983. Of the 400,000 shares originally authorized, 91,657 were issued for the 1977 tax year, 308,343 remain for the 1978 through 1980 tax years. Based on qualified property additions by the System in 1978 and on present estimates for 1979 through 1983, it is estimated that the additional one-percent investment tax credit could amount to approximately $13,000,000 in total for the tax years 1978 through 1983. At an assumed average trading price of $28 per share, it is presently estimated that 464,000 shares of stock would be issued under the non-contributory portion of the TRESOP for the six years involved. Columbia therefore requests that the existing authorization for the issuance of 308,343 shares with respect to the tax years 1978 through 1980 be superseded by authorization for the issuance of up to 500,000 shares with respect to the tax years 1978 through 1983.

In addition to the foregoing, the Tax Reform Act of 1976 permits Columbia to claim an additional ½ of 1% investment tax credit to the extent it is matched by voluntary contributions by the participants. Columbia has decided to amend the TRESOP to add the contributory ½ of 1% feature effective with the 1978 tax year. Under the contributory portion of the plan, it is estimated that the additional ½ of 1% investment tax credit will equal $6,500,000. That amount will be matched by equal employee contributions. Based on an assumed price of $28 per share, 464,000 shares would be issued. Columbia proposes to issue to the TRESOP (1) up to 250,000 shares of authorized but unissued common stock of Columbia in consideration of the additional ½ of 1% investment tax credit and (2) up to 250,000 shares of authorized but unissued common stock in consideration of equal contributions by employees.

Columbia presently has 50,000,000 shares of common stock authorized and 32,580,226 shares outstanding, of which 149,614 shares were issued as contributions to the TRESOP in 1976, 1977 and 1978 with respect to the 1975, 1976, and 1977 tax years. The number of new shares which will be issued under both the contributory and non-contributory portions of the plan will be determined by dividing the amount of the additional investment tax credit or matching employee contribution by the average of the closing prices of Columbia's common stock on the New York Stock Exchange Composite Tape for the 20 consecutive trading days immediately preceding the date of issue. In no case will the new shares be issued for less than the $10 par value of Columbia's common stock. Dividends on the shares held in the TRESOP will continue to be paid currently to the beneficial owners. The Trustee of the TRESOP will not be permitted to vote the shares it holds, unless it shall have received voting instructions from participating employees.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $31,300, including legal fees of $2,000 and accounting fees of $8,500. It is further stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested persons may, not later than August 16, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-23567 Filed 7-30-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16044; File No. SR-MSE-79-15]

Midwest Stock Exchange, Inc., Self-Regulatory Organization; Proposed Rule Change

July 24, 1979.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-26, 16 (June 4, 1975), notice is hereby given that on June 25, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Midwest Stock Exchange, Inc.

Statement of the Terms of Substance of the Proposed Rule Change

The Midwest Option Trade Match Fee will increase from $.01 per contract side to $.02 per contract side. This increase will be effective at the opening of Exchange business on July 2, 1979.

Midwest Stock Exchange, Inc.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

Inasmuch as the MSE utilizes the Chicago Board Options Exchange's (CBOE) trade comparison system, the Midwest has been the indirect recipient of the benefits gained from extensive modifications by the CBOE of that system which now provide a maximum of comparisons. The increased comparisons ease the work load of member firms and decrease problems associated with out-trades. The increase in fees for trade match service from $.01 to $.02 per contract side will help to offset increasing costs incurred in the development and operations of the system. Under its agreements with the CBOE, the Midwest is obligated to turn over this increase in fees to the CBOE. Further, this increase is identical to an increase the CBOE imposed for this service effective July 2, 1979 and the Midwest is required pursuant to its agreement with the CBOE to increase its fees proportionately.

The proposed rule change is consistent with Section 6 of the Act and, in particular, Section 6(b)(4) which

requires that the Rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other changes among its members an issuers and other persons using its facilities.

The Midwest Stock Exchange, Incorporated has neither solicited nor received any comments.

The Midwest Stock Exchange, Incorporated believes that no burdens have been placed on competition.

The foregong rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before August 21, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

July 24, 1079.

[FR Doc. 79-23568 Filed 7-30-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21157; 70-6251]

Southwestern Electric Power Co.; Proposed Lease Arrangements for the Acquisition of Coal Rail Cars

Notice is hereby given that Southwestern Electric Power Company ("SWEPCO"), an electric utility subsidiary of Central and South West Corporation, P.O. Box 21106, Shreveport, Louisiana 71156, a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed and amended pursuant to the Public utility Holding Company Act of 1935 ("Act"), designating Sections 9(a) and 10 of the Act as applicable to the proposed transaction. All interested persons are referred to the application, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By order dated January 31, 1979 (HCAR No. 20906), SWEPCO was authorized to enter into lease arrangements concerning its acquisition of 242 coal hopper rail cars. Said 242 rail cars were part of 605 such cars that SWEPCO proposed to acquire, and jurisdiction was reserved in said order with respect to the terms of SWEPCO's proposed acquisition of the remaining 363 rail cars.

The rail cars are one hundred ton, sixty foot, open-top coal hopper rail cars for use in unit train service between Gillette, Wyoming and SWEPCO's Welsh Unit No. 1, Welsh Unit No. 2 and Flint Creek power plants. SWEPCO acquired 605 equivalent rail cars pursuant to the authorizations given in orders of August 9, 1976 (HCAR No. 19643), and October 12, 1977 (HCAR No. 20207). Each unit train consists of 110 coal cars and SWEPCO maintains a 10% or 11 car reserve for maintenance and repairs. The proposed acquisition of 605 cars will provide one additional unit train for Welsh Unit No. 1, one additional unit train for Flint Creek and three unit trains for Welsh Unit No. 2, which is presently being contructed and is scheduled for commercial operation in 1980. The 605 cars will cost approximately $25,000,000, with the final cost dependent upon cost escalations under the contract with the manufacturer, delivery charges and the amounts of any sales or use taxes.

It is stated that additional unit trains for Welsh Unit No. 1 and Flint Creek are necessary because the turnaround times experienced by SWEPCO are in excess of the times originally estimated, such tardiness being attributed to congestion on the railroad's line from the mine site near Gillette, Wyoming to the Welsh plant in Cason, Texas and the Flint Creek plant in Siloam Springs, Arkansas, distances of about 1,500 and 1,100 miles, respectively. The estimated turnaround time to the Welsh plant was 155 hours; that actually experienced, 210 hours. The estimated turnaround time to the Flint Creek plant was 114 hours; that actially experienced, 183 hours. To compensate for the added times SWEPCO had been using two unit trains consisting of carrier-owned rail cars supplied by Burlington, Northern, Inc., one of which is no longer available to SWEPCO. SWEPCO believes it advisable to acquire sufficient additional cars (242) so that it does not need to rely on carrier-owned cars for these two unit trains.

It is further stated that 363 cars (three unit trains) are presently estimated to be sufficient to transport the coal requirements for Welsh Unit No. 2, the coal for which is to be provided under a contract between SWEPCO and Amax Coal Company covering coal requirements for Welsh Unit No. 1, Welsh Unit No. 2 and Flint Creek for the first 25 years of the operation of such facilities.

SWEPCO intends that all of the rail cars will be used exclusively by it, since the unit trains will operate continuously there will be no spare car capacity. In the event the turnaround time now experienced by SWEPCO is reduced, SWEPCO will either acquire fewer coal cars than the number presently anticipated to be required to service Welsh Unit No. 3 or will refrain from replacing cars which have become worn out or irreparably damaged in operation, or both.

By post-effective amendment SWEPCO requests authorization to enter into a proposed railroad equipment lease ("Lease") for its acquisition of the remaining 363 rail cars. The Lease is with Cason Car Corporation ("Lessor") and is for 363 rail cars for an interim term beginning on the date of delivery of the rail cars and ending on January 1, 1980, followed by a primary term of 20 years ending on January 1, 2000. The rental for the interim term will be a payment on January 1, 1980, equal to the purchase price of the rail cars, as defined in the Lease, times the daily equivalent of 9¾% per annum for each day of the interm term. Rental payments thereafter will be required semiannually, commencing July 1, 1980, in accordance with the following schedule:

Rental payment dates	No. of payments	Percent of purchase price
July 1, 1980–Jan. 1, 1985	10	4.875
July 1, 1985–July 1, 1999	29	6.250
Jan. 1, 2000	1	16.250

The rental payments are calculated to be an amount sufficient to pay interest only at 9¾% per annum on the purchase price for the first five years of the primary term, to amortize 90% of the purchase price at 9¾ per annum during the sixth through 20th year of the primary term, with a final payment of

the then remaining unamortized portion of the purchase price.

The Lease is a net lease under which SWEPCO agrees to pay all taxes and charges on the rail cars or assessed against the Lessor (other than income taxes assessed against the Lessor on its fees) and covenants to keep the rail cars insured or self-insured, free of non-permitted liens and encumbrances, in good maintenance and repair and in compliance with laws and governmental regulations. In the event of a casualty occurrence (which would include a rail car's becoming worn out, lost, stolen, destroyed, condemned or otherwise permanently unfit for use), SWEPCO is required to either: (1) terminate the Lease with respect to such rail car and pay the Lessor a sum equal to the Casualty Value of such rail car; (2) substitute replacement equipment having a value and a useful life at least equal to the Casualty Value and remaining useful life of the rail car being replaced; or (3) provide sufficient funds to the Lessor to enable it to acquire replacement equipment meeting the requirements of clause (2) above. The Casualty Value of a rail car represents the then unamortized portion of its purchase price as of a given rental payment date.

The rail cars are being manufactured by Thrall Car Manufacturing Company ("Thrall") and will be sold by it to the Lessor under a conditional sales agreement ("CSA"). Thrall will assign its right, title and interest in the CSA and the rail cars to Mercantile-Safe Deposit and Trust Company, as agent ("Agent") pursuant to an agreement and assignment ("Assignment"), which will hold security title to the rail cars on behalf of Home Beneficial Life Insurance Company, The Lafayette Life Insurance Company, the State of North Carolina, Republic National Life Insurance Company, Royal Globe Insurance Company, The State Life Insurance Company and United Farm Bureau Family Life Insurance Company (collectively, the "Investors"), who will provide 100% of the purchase price of the rail cars. The Investors will be repaid in installments under the CSA equal to the rental payments required to be made by SWEPCO under the Lease. the Investors, the Agent and SWEPCO will enter into a finance agreement describing the proposed transaction, and the Lessor will assign to the Agent, as additional security, the rentals to be received under the Lease (SWEPCO will acknowledge notice of and consent to such assignment).

SWEPCO will have the right to terminate the Lease as of any rental payment date occurring on or after January 1, 1990, in the event it determines the rail cars are no longer economical for use in its operations by paying the Casualty Value of the rail cars at such date to the Lessor. Upon payment of the Casualty Value or upon payment of the last rental installment SWEPCO will receive title to the rail cars and will have no further obligations under the Lease. SWEPCO will also have the right to terminate the Lease as of any rental payment date by depositing with the Agent an amount sufficient to prepay the unamortized principal amount of the CSA indebtedness plus a premium equal to 9¾% of such amount during the first year of the primary term and declining by equal annual amounts to no premium in the final year of the primary term, provided that no such redemption can be made prior to January 1, 1990, from the proceeds of borrowings by SWEPCO having a lesser interest cost or a shorter remaining weighted average life than the interest cost or remaining weighted average life of the CSA indebtedness. SWEPCO can also terminate the lease as of any rental payment date by entering into and delivering to the Agent an assumption agreement under which the Lessor would assign its interests as vendee under the CSA to SWEPCO and SWEPCO would directly assume liability for repayment of the CSA indebtedness.

It is stated that SWEPCO intends to include the full amount of the rental payments under the Lease in determining its fuel costs for use in the fuel adjustment clause of its rates, subject to approval by applicable regulatory authorities.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than August 21, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended by said post-effective amendment or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such Rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 79-23566 Filed 7-30-79; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 06106/5217]

MESBIC of San Antonio, Inc.; Notice of Application for License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by MESBIC of San Antonio, Inc. (applicant), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102(1979).

The officers and directors are as follows:

Juan J. Patlan, 140 Placid, San Antonio, Texas 78228; Director, President
Emilio Nicolas, 111 Paseo Encinal, San Antonio, Texas 78212; Director
Joseph L. Suarez, 535 Clemens Drive, Florissant, Missouri 63033; Director, Secretary/Treasurer
O. J. Valdez, 5903 Forest Ledge, San Antonio, Texas 78240; Director
George Ozuna, 5118 Vance Jackson Rd., San Antonio, Texas 78230; Director
A. John Yoggerst, 900 Tuxedo, San Antonio, Texas 78209; Vice Pres., General Mgr.

The applicant will maintain its principal place of business at 2300 West Commerce Street, San Antonio, Texas 78207. It will begin operations with $251,000 of private capital derived from the sale of 5,020 shares of common stock to the Mexican American Unity Council.

It is anticipated that the private capital will be increased to $751,000 shortly after licensing.

The applicant will conduct its operations primarily in San Antonio, Texas.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management and the probability of successful operation of the applicant under their management, including adequate profitabiltiy and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in San Antonio, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 23, 1979.

Peter F. McNeish,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 79-23511 Filed 7-30-79; 8:45 am]

BILLING CODE 8025-01-M

Proposed SBA Procedures Implementing National Environmental Policy Act

AGENCY: Small Business Administration.

ACTION: Request for Public Comment.

SUMMARY: The Small Business Administration is publishing this notice to obtain public comment on its proposed procedures to implement the National Environmental Policy Act, pursuant to Regulations issued by the Council on Environmental Quality (43 FR 55978; November 29, 1978). The procedures include provisions on necessary assessments by SBA of programs and actions as to significant environmental effect; possible preparation by SBA of environmental impact statements; and consideration in appropriate cases of alternatives to mitigate adverse environmental effects. Certain types of SBA actions are indicated as not ordinarily considered to significantly affect the quality of the environment.

DATE: Comments on or before August 20, 1979.

ADDRESS: Send comments to Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Evelyn Cherry, Chief, Special Projects Division, Small Business Administration, 1441 L St., NW., Washington, D.C. 20416 (202) 653-6696.

SUPPLEMENTARY INFORMATION: The CEQ Regulations require each Federal Agency to adopt and publish procedures to implement such Regulations in accord with the National Environmental Policy Act and Executive Order 11991 (May 24, 1977).

Dated: July 25, 1979.

A. Vernon Weaver,

Administrator.

National Environmental Policy Act

Introduction

1. *Purpose.* To set forth Agency procedures in accordance with the National Environmental Policy Act.

2. *Personnel Concerned.* Technical personnel in F&I, MA, PA, MSB/COD and Administration.

3. *Distribution.* Standard.

4. *Originator.* Office of Financing.

CONTENTS

National Environmental Policy Act

Compliance With the National Environmental Policy Act

1. *General.* These procedures apply the National Environmental Policy Act (NEPA) to SBA programs and activities. They include the designation of officals who would act as focal points within the decisionmaking process, consideration and identification by SBA of the environmental effects and possible alternatives to mitigate adverse environmental impacts, and preparation and circulation of draft and final environmental impact statements to interested persons and agencies. Certain types of SBA actions are indicated as not ordinarily considered to significantly affect the quality of the environment. In all cases, however, where a proposed SBA action could potentially have a significant effect on the environment, and environmental assessment will be made and an environmental impact statement prepared when appropriate.

2. *Authority.* The National Environmental Policy Act (NEPA) of 1969 (Pub. L. 91-190) and the regulations issued by the Council of Environmental Quality on November 28, 1978 (43 FR 55978, 56007) require each Federal Agency to describe and promulgate procedures which will carry out the requirements of NEPA.

NEPA authorizes and directs that, to the fullest extent possible, the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies for the protection of the environment set forth in NEPA; and that procedures be developed to insure that environmental values are given appropriate consideration in decisionmaking along with economic and technical considerations. It also requires that Federal agencies include in recommendations or reports on proposals for legislation, and other Federal actions having individually or cumulatively a significant effect on the quality of the human environment, a statement on environmental considerations. Executive Order 11514, as amended by Executive Order 11991, further specifies that Federal agencies develop their policies, plans and programs so as to help meet national environmental goals, and comply with CEQ NEPA regulations, except as inconsistent with statutory requirements.

3. *General responsibilities.* The responsible SBA official (either in the Central Office or in a field office) will when necessary:

a. Assess the potential environmental impact of recommendations or favorable

reports on proposals for (1) *legislation* significantly affecting the quality of the human environment ("legislative actions") and (2) all other SBA actions which individually or cumulatively significantly affect the quality of the human environment ("administrative actions") as early as possible and in all cases prior to agency decision.

b. Consult with other appropriate Federal, State and local agencies and with the public in making environmental assessments.

c. Identify the issues involved in specific environmental assessments or impact statements.

d. Undertake or provide for initial environmental assessments, when required, with initial technical, economic and other studies.

e. Prepare and circulate, where required, a draft environmental impact statement in time to accompany the proposal through the SBA review process for the action in question.

f. Consider the comments of other Federal agencies and the public.

g. Prepare and circulate final environmental impact statements where required, taking into account the comments received.

4. *Central office responsibilities.* a. The Administrator shall designate an SBA official to develop guidelines and information to enable applicants for SBA financial assistance to provide environmental impact information early in the application process, and to be responsible for review of SBA NEPA compliance. This official shall also provide technical assistance to other SBA offices on such compliance. Particular attention will be given to consultation with Council for Environmental Quality (CEQ), the Environmental Protection Agency, and State and local environmental agencies. This official will be involved in the decision process for proposed major SBA program changes and for review of other Central Office actions having environmental effects.

b. The official should be consulted as early in the development of the action as possible. This consultative role of the SBA official may also be necessary in Inter-Agency activities. For example, if the SBA is involved in the *development phase* of a construction project, the SBA should participate in the evaluation of environmental impact. If however, SBA's involvement begins only after environmental assessments are completed and accepted, then SBA will not require any additional environmental evaluation. The objective of the review will be to evaluate whether the environmental impact of the proposed action would be likely to be significant. If such impact is considered likely to be significant the evaluation would recommend the preparation of an environmental assessment, or if appropriate, an environmental impact statement. Such evaluations (and any resulting environmental assessments or environmental impact statements) shall accompany the proposal through existing agency review processes. The Associate Deputy Administrator for Programs or his designee shall determine whether an environmental assessment or environmental impact statement is necessary on such Central Office actions. If an environmental assessment is determined to be necessary, the procedures of subparagraphs *5b* and *d* below shall be followed to the extent applicable.

5. *Field office responsibilities.* a. The processing loan officer (L/O) will make the initial evaluation. If the loan is for a project which is categorically excluded by these procedures, then this should be so stated in the loan officer's report. If the project for which SBA financial assistance is sought is likely to have significant environmental impact, the L/O should refer the file to the district director for evaluation. Note that these reviews should be part of the initial screening process so that if an environmental assessment is deemed appropriate, it can be prepared during the early phase of processing.

b. If the district director finds that the financial assistance application is for a project that is not categorically excluded by these procedures, an environmental assessment shall be prepared on the proposal before any SBA approval actions are taken. Applicants for assistance from SBA may be requested to provide analyses and information for use in preparing environmental assessments. SBA will provide guidelines to enable applicants for SBA financial assistance to submit any required environmental impact information early in the application process, to avoid delays in processing applications. However, evaluation of the environmental issues and completion of an assessment will be the responsibility of SBA. To the extent practicable, information on environmental effects should be obtained from environmental agencies and from the public if an environmental assessment is made.

c. Upon the receipt of an application for a surety bond guaranty, the reviewing officer shall make the determination whether the project involved is categorically excluded under these procedures. It should be noted that those projects which will improve the quality of the environment should be given the same evaluation as those which may affect the environment in a negative fashion.

d. Environmental assessments, when required should identify reasonable alternative actions that will avoid or minimize adverse impacts and should include concise evaluations of both the long and short-range implications of the proposed actions. The environmental factors shall be considered along with the net economic, technical and other benefits of proposed actions, consistent with other essential considerations of national policy, to restore environmental quality as well as to avoid or minimize undersirable consequences. The assessments shall include a determination as to whether an Environmental Impact Statement (EIS) is required. If a significant environmental impact is found to exist then an EIS will be prepared. If however, the assessment finds that the SBA action will not have a significant impact, a finding of "no significant impact" will be made and documented.

Further, an environmental assessment must also show that the proposed action is in compliance with other applicable environmental review requirements. Such requirements include Floodplain Management (E.O. 11990), Protection of Wetlands (E.O. 11988), National Historic Preservation Act of 1966 as amended, and others as are so designated. (See appendix)

6. *Applicability to SBA Actions.* All SBA actions which individually or cumulatively have significant effect on the quality of the human environment are to be reviewed for possible environmental impacts. The types of actions subject to review under this part include:

a. Recommendations or favorable reports relating to legislation;

b. New and continuing projects and program activities directly undertaken by SBA or supported in whole or in part through Federal contracts, guarantees, loans, or other forms of funding assistance;

c. Making, modification, or establishment of regulations, rules, procedures, and policy; and

d. In those cases where other Federal Agencies or State or local governments have already required and have accepted an environmental assessment or impact statement, the SBA will not require any further environmental evaluation. If requested, however, in connection with SBA assistance, the SBA will participate in the preparation of these evaluations.

An environmental assessment on an SBA form (to be published at a later date) will be made when it appears that the proposed SBA action is not categorically excluded by these procedures and could potentially have significant environmental effects.

7. *Categorical exclusions.* The following categories of SBA actions are not ordinarily considered to be Federal actions which significantly affect the quality of the environment. Therefore, generally, the SBA will not be preparing an environmental assessment or an EIS in these cases. It should be noted that the district director at the field level and the designated SBA official at the Central Office level can make the determination that a significant environmental impact exists when a case appears sufficiently likely to warrant an assessment. These determinations should be based on the official's evaluation of the specific circumstances in each situation and must be documented as to the factors causing such determination.

a. *Agency administrative action such as personnel actions.* Should these actions constitute the movement of large groups of people or the construction of building space, an assessment may have to be prepared.

b. *Legislative reports.* In those cases where legislation is being enacted on SBA programs and could potentially have a significant environmental effect, an assessment may have to be prepared if the SBA report recommends legislation.

c. *Promulgation of rules, regulations, procedures, or interpretations.* In those cases where the new or changed rules, regulations, procedures or interpretations deal with construction projects or land purchases of a value greater than $300,000, then an assessment may have to be prepared.

d. *Procurement assistance actions.* No environmental assessments are necessary in the Agency's activities to assure that small business receives its share of existing procurements. Only in those cases where the SBA has a direct role in the awarding of a contract may an assessment be required. Such procurements must involve construction or purchase of land in excess of $300,000, or the purchase of dangerous materials in excess of $150,000.

e. *Management and technical assistance actions.* In those cases where management or technical assistance is being provided in support of a construction project in the developmental stage (either funded through the SBA or another government Agency) the SBA may be required to participate in support of a lead agency in the preparation of an environmental assessment.

f. *Small Business Investment Company program actions.* In those cases where the SBA is approving an SBIC action of financing construction of facilities or purchase of land, then the SBA may be required to prepare an environmental assessment.

g. *Physical disaster loans and guarantees.* In those cases where the SBA may be providing funds in excess of $300,000 to businesses or individuals to restore their property to its original state and restoration work may potentially have significant environmental affects, the district director may require the preparation of an environmental assessment.

h. *Business loans and guarantees (including EOL loans, HAL, energy, and disaster loans for economic injury).* In those cases where loan proceeds for:

(1) Construction and/or purchase of land exceeds $300,000 or

(2) the loan is in response to a government regulation which pertains to the environmental impact of the business operation.

an environmental assessment may be required.

i. *Surety Bond guarantees.* Since the SBA becomes involved with the guaranteeing of a small business' ability to satisfy an existing contract, no environmental assessments are necessary. In those cases where the SBA does become involved in the development of a construction project under the Surety Bond Guaranty Program, then the SBA will support an environmental evaluation.

j. *Pollution control financing guaranty program actions.* In those cases where an individual business is being financed in excess of $500,000, an environmental assessment may be required.

k. *Local and community development loan and guarantee actions.* In those cases where the loan is being utilized for construction in excess of $300,000, then an environmental assessment may be required.

l. *Portfolio-management and review actions.* No assessments will be required.

m. *Advocacy program actions.* No assessments will be required.

n. *Property sales or lease assistance actions.* However, in cases of construction exceeding $300,000 an environmental assessment may be required.

Appendix 1—National Historic Preservation Act of 1966

As amended, 16 U.S.C. §§ 470 et seq.

Administering Agency: Advisory Council on Historic Preservation; Heritage Conservation and Recreation Service, Department of the Interior.

Environmental Review Requirement: Section 106, 16 U.S.C. § 470 f.

Regulations: Procedures for the protection of Historic and Cultural properties, 36 CFR Part 800 (Advisory Council Procedures);
36 CFR Part 60—National Register of Historic Places.
36 CFR Part 61—Criteria for Comprehensive Statewide Historic Surveys and Plans.
36 CFR Part 63—Determination of Eligibility for Inclusion in the National Register.
Executive Order No. 11593, May 13, 1971, 36 FR 8921, Protection and Enhancement of the Cultural Environment.

Program: The National Historic Preservation Act of 1966 establishes a comprehensive program to protect cultural resources from the adverse effects of Federal activities. The Act creates a National Register of Historic Places to which places of historic, architectural or archaeological significance can be named. Properties listed in or eligible for listing in the National Register are subject to special protections of the Act. The Act also creates an Advisory Council on Historic Preservation and establishes grant and technical assistance programs to benefit the preservation of cultural properties.

Environmental Review: Section 106 of the Act requires that:

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Sections 470i to 470n of this title, a reasonable opportunity to comment with regard to such undertaking.

The Advisory Council on Historic Preservation has promulgated a regulation to implement Section 106 (36 CFR Part 800). The Advisory Council procedures require Federal agencies to identify cultural properties which may be affected by their programs or projects, to determine whether such properties are included in or eligible for inclusion in the National Register and to determine whether the project's effect on such properties will be adverse. These determinations are to be made in consultation with the State Historic Preservation Officer (SHPO) of the state where the properties are located.

If a federal agency determines that its project will have an adverse impact on a National Register property, the comments of

the Advisory Council must be obtained before the project can proceed. The Advisory Council must be consulted, given additional information and afforded an opportunity to conduct an on-site inspection and a public hearing. A Memorandum of Agreement between the Advisory Council, the SHPO and the federal agency on means to eliminate or mitigate the effects of the project on the cultural property may be adopted at this time. If not, the review and comments of the full Board of the Advisory Council must be completed before any further action may be taken on the Federal project.

Energy Conservation Standards for New Buildings Act

42 U.S.C. §§ 6831–6840

Administering Agency: Department of Energy

Environmental Review Requirement: 42 U.S.C. § 6834

Regulations: None to date.

Program: This act establishes a program to decrease energy consumption and eliminate energy waste by 1) requiring energy conservation features to be incorporated into all new commercial and residential buildings receiving federal financial assistance, 2) providing for the development and implementation of energy conservation related performance standards for new residential and commercial buildings and 3) encouraging states and local governments to adopt and enforce such performance standards through their building codes and other mechanisms.

Environmental Review: Section 6834 requires that following the effective date of final performance standards for new commercial and residential buildings pursuant to the Act, no federal financial assistance for the construction of any such building shall be approved until the building has been determined to meet such performance standards. To obtain this determination, buildings subject to the performance standards must undergo an "approval process" administered either by a local government agency, a state agency or the Department of Energy.

Environmental Review Requirements

Executive Orders 11988 and 11990

In conjunction with his environmental message to Congress announced on May 23, 1977, President Carter issued two executive orders which establish additional environmental review requirements for federal agencies. E.O. 11988 is entitled Floodplain Management and E.O. 11990, Protection of Wetlands.

E.O. 11988 states as its basic objective that:

Each agency shall provide leadership and shall take such action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains, in carrying out its responsibilities. * * *

Section 2 of the order provides further that "each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain. * * *" The required evaluation must be included in any environmental impact statement prepared under NEPA. In addition, alternative to siting a federal structure or activity in a floodplain must be considered. If floodplain siting is determined to be "the only practicable alternative consistent with the law and with the policy set forth in this Order," the agency is then required to take actions to minimize "harm to or within the floodplain" that may be caused by the activity. In addition, the agency is required to circulate a notice through the OMA A-95 process setting forth:

(i) the reasons why the action is proposed to be located in the floodplain;

(ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and

(iii) a list of the alternatives considered.

The Order also requires federal agencies to provide opportunities for public review of "any plans or proposals for actions in floodplains, in accordance with section 2(b) of Executive Order No. 11514". Each agency is directed to develop procedures to implement the Order and specifically to assure compliance with the Order for projects for which an EIS is not prepared. This latter point may be important in cases where NEPA compliance is not an issue.

Section 3 and 4 of the Order impose additional requirements on agencies administering federal real property and on agencies which "guarantee, approve, regulate, or insure any financial transactions . . ." Finally, section 6 defines a number of terms including "floodplain".

E.O. 11990 commands that "each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities. . . ." In carrying out this responsibility, each agency, "to the extent permitted by law" shall avoid undertaking any activity which results in construction in wetlands unless the head of the agency determines:

(1) that there is no practicable alternatives to such construction, and

(2) that the proposed activity includes all practicable measures to minimize harm to wetlands which may result from such use.

Unlike the floodplains under, E.O. 11990 does not apply to the "issuance by Federal agencies of permits, licenses, or allocations, to private parties for activities involving wetlands on *non-federal property.*" [emphasis supplied] The Order also does not apply to "projects presently under construction, or to projects for which all of the funds have been appropriated through fiscal year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977." These exclusions clearly give the executive order a prospective effect.

The Order requires that each federal agency shall provide opportunity "for early public review of any plans or proposals for new construction in wetlands" pursuant to Section 2(b) of E.O. 11514, Section 4 governs the disposal of federally-owned wetlands. Section 5 establishes standards for conducting the review of federal activities required by Section 1 of the Order. Section 7 gives definitions of several terms including "wetlands."

Both E.O. 11988 and E.O. 11990 add additional requirements to the environmental review of wetland and floodplain impacts conducted by federal agencies under NEPA and other statutory authorities. The exact details of these requirements will be worked out as federal agencies develop procedures to implement the new orders. These orders also impose substantive requirements on federal activities. The clear intent of the executive orders is that floodplain and wetland sitings are to be avoided if at all possible. As of now the full impact of the orders remains to be seen. Both are so recent that they remain untested in court. The orders are certain to be controversial, however, and issues surrounding their implication may take some time to resolve.

Flood Disaster Protection Act of 1973

42 U.S.C. § 4001–4127

Administering Agency: Department of Housing and Urban Development.

Environmental Review Requirement: 42 U.S.C. §§ 4022, 4023, 4101, 4102, 4013.

Regulations: 24 CFR Parts 1909, 1910, 1915.

Program: The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance after March 2, 1974 as a condition for receiving any federally related assistance for acquisition or building purposes as to insurable structures within areas identified as flood, mudslide, or flood-related erosion hazard areas. The Act also requires that after July 1, 1975 or one year after a community is notified as having a flood, mudslide or flood-related erosion hazard, no federal financial assistance, including mortgage loans from federally-regulated lenders, shall be given within such an area unless the community participates in the program set up by the Act. The Flood Disaster Protection Act is a follow-up to the National Flood Insurance Act of 1968. The 1968 Act provided previously unavailable flood insurance protection to property owners in flood-prone areas. Later this insurance was extended to mudslide and flood-related erosion areas. To qualify for such insurance communities must meet minimum requirements for adequate flood plain management as provided in 24 CFR 1910. Other requirements for the insurance are (1) that a risk study be made of the applying community and (2) that flood elevation and other statistical data relating to potential flood damage be developed and recorded.

Environmental Review: § 4022—After 1971 no new flood insurance coverage shall be extended to any community which does not have adequate land use control measures.

24 CFR Part 1090.22—Such measures must be listed in any application for eligibility.

§ 4023—No new insurance shall be granted for any property found by state or local authorities to be in violation of state or local laws which are intended to discourage land development and occupancy in flood prone areas.

§ 4101—The Secretary (HUD) will consult with the Secretaries of the Army, Interior,

Agriculture and Commerce, as well as the TVA in identifying and establishing flood risk zones.

§ 4102—The Secretary (HUD) is authorized to carry out studies as to the adequacy of state and local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention.

[FR Doc. 79-23681 Filed 7-30-79; 8:45 am]
BILLING CODE 6025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/205]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Meeting

The working group on ship design and equipment of the Subcommittee on Safety of Life at Sea (SOLAS), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting at 9:30 a.m on Tuesday, August 14, 1979 in Room 8334, of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

The purpose of this meeting will be to review the intersessional meeting of Machinery and Electrical Working Group and prepare for the Twenty-First Session of the Ship Design and Equipment Subcommittee of the Intergovernmental Maritime Consultative Organization (IMCO) which is scheduled for September 24–28, 1979 in London. The agenda includes discussion of the following for Twenty-First Session:

— revision of IMCO Resolution A.325;
— special purpose ships/offshore supply vessels;
— noise level on board ships;
— maneuverability of ships; and
— diving systems

Request for further information should be directed to Captain R. L. Brown, United States Coast Guard, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone (202) 426–2167.

The Chairman will entertain comments from the public as time permits.

John Lloyd III,
Acting Director, Office of Maritime Affairs.

July 18, 1979.
[FR Doc. 79-23560 Filed 7-30-79; 8:45 am]
BILLING CODE 4710-07-M

[Public Notice CM-8/206]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Meeting

The working group on lifesaving appliances of the Subcommittee on Safety of Life at Sea (SOLAS), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting at 10:00 a.m on August 21 and 22, 1979, in Room 3303, of the Department of Transportation (Trans Point Building), 2100 Second Street, S.W., Washington, D.C. 20590.

The purpose of the meeting will be to:

— discuss the draft text for revision of Chapter III, SOLAS 1974 and consider U.S. response to the proposal;
— discuss Chapter III revision of liferaft carriage and construction regulations
— discuss Chapter III revision of liferaft signal requirements;
— discuss LSA section of Code of Nuclear Merchant Ship and develop U.S. response to proposal;
— discuss liferaft servicing and prepare U.S. response;
— discuss future IMCO LSA Work Program.

Request for further information should be directed to Mr. N. W. Lemley, United States Coast Guard (G-MMT-3/TP22), 2100 Second Street, S.W., Trans Point Building, Washington, D.C. 20590, telephone (202) 426–1444.

The Chairman will entertain comments from the public as time permits.

John Lloyd III,
Acting Director, Office of Maritime Affairs.

July 18, 1979.
[FR Doc. 79-23561 Filed 7-30-79; 8:45 am]
BILLING CODE 4710-07-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Industrial National Bank of East Chicago, Ind.; Order of Temporary Exemption

The Industrial National Bank of East Chicago, Indiana is hereby exempted from section 12(g) of the 1934 Securities Exchange Act until June 30, 1979 upon my finding that such action is not inconsistent with the public interest or the protection of investors.

Dated: July 19, 1979.
Lewis G. Odom, Jr.,
Acting Comptroller of the Currency.

[FR Doc. 79-23493 Filed 7-30-79; 8:45 am]
BILLING CODE 4810-33-M

Office of the Secretary

U.S. Model Estate and Gift Tax Convention; Notice of Availability and Request for Comments

The Treasury Department today released a revised model estate and gift tax convention. The model represents the Treasury's basic treaty negotiating position. The new model, which replaces the model published by the Treasury Department on March 16, 1977, applies to the Federal taxes on transfers of estates and gifts and on generation-skipping transfers. Most of the revisions reflect the changes in Federal law made by the Tax Reform Act of 1976.

The general principle underlying the model is to grant to the country of domicile the right to tax the estate or transfers of a decedent or transferor on a worldwide basis with a credit for tax paid to the other State with respect to certain types of property located therein. Specifically, transfers of real property and certain business assets are taxable in the Contracting state where situated. The model also allows the country of citizenship the right to tax the estate or transfers of a decendent or transferor, with a credit for tax paid to the other State on a domiciliary or situs basis. The model also provides rules for resolving the issue of domicile.

The Treasury Department welcomes comments on the model. Requests for copies for comments should be sent in writing to: H. David Rosenbloom, International Tax Counsel, U.S. Treasury Department, Washington, D.C. 20220.

Dated: July 23, 1979.
Donald C. Lubick,
Assistant Secretary. (Tax Policy).

[FR Doc. 79-23564 Filed 7-30-79; 8:45 am]
BILLING CODE 4810-25-M

[Department Circular, Public Debt Series—No. 16-79]

Treasury Notes of August 15, 1982; Series M-1982

Washington, July 26, 1979.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,750,000,000

of United States securities, designated Treasury Notes of August 15, 1982, Series M–1982 (CUSIP No. 912827 JV 5). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the seurities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents of foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2.1. The securities will be dated August 15, 1979, and will bear interest from that date, payable on a semiannual basis on February 15, 1980, and each subsequent 6 months on August 15 and February 15, until the pricipal becomes payable. They will mature August 15, 1982, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Tuesday, July 31, 1979. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, July 30, 1979.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purposes are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That rate of interest will be paid on all of the securities. Based on such interest rate the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers

it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made or completed on or before Wednesday, August 15, 1979, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Friday, August 10, 1979, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Thursday, August 9, 1979, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,
Fiscal Assistant Secretary.

[FR Doc. 79-23645 Filed 7-27-79; 12:21 pm]
BILLING CODE 4810-40-M

[Department Circular, Public Debt Series—No. 17-79]

9 Percent Treasury Notes of February 15, 1987; Series B-1987

Washington, July 26, 1979.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,500,000,000 of United States securities, designated 9% Treasury Notes of February 15, 1987, Series B-1987 (CUSIP No. 912827 JK 9). The securities will be sold at auction, with bidding on the basis of price. Payment will be required at the bid price of each accepted tender in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2.1. The securities offered will be identical to the 9% Treasury Notes of February 15, 1987, Series B-1987 (CUSIP No. 912827 JK 9) issued under Department of the Treasury Circular, Public Debt Series—No. 2-79, dated February 1, 1979, except that interest will accrue from August 15, 1979, and payment for the securities will be calculated on the basis of the auction price determined in accordance with this circular. With this exception, the securities are as described in the following excerpt from the above circular:

"2.1. The securities will be dated February 15, 1979, and will bear interest [1] from that date, payable on a semiannual basis on August 15, 1979, and each subsequent 6 months on February 15 and August 15, until the principal becomes payable. They will mature February 15, 1987, and will not

[1] On February 8, 1979, the Secretary of the Treasury announced that the interest rate on the notes would be 9 percent per annum.

be subject to call for redemption prior to maturity.

"2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

"2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

"2.4. Bearer securities with interest coupons attached, and securities registered as to the principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

"2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date."

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, August 1, 1979. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, July 31, 1979.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the price offered, expressed on the basis of 100 with two decimals, e.g., 100.00. Common fractions may not be used. Only tenders at a price more than the original issue discount limit of 98.25 will be accepted. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified price. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Other are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commerical bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and price range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the highest prices, through successively lower prices to the extent required to attain the amount offered. Tenders at the lowest accepted price will be prorated if necessary. Successful competitive bidders will be required to pay the price that they bid. Those submitting noncompetitive tenders will pay the weighted average price in two decimals of accepted competitive tenders. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the price. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the weighted average price of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for alloted securities must be made or completed on or before Wednesday, August 15, 1979, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Friday, August 10, 1979, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Thursday, August 9, 1979, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amunt of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or

assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4 If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and made delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,
Fiscal Assistant Secretary.

[FR Doc. 79-23646 Filed 7-27-79; 12:21 pm]
BILLING CODE 4810-40-M

[Department Circular, Public Debt Series—No. 18-79]

9⅛ Percent Treasury Bonds of 2004-2009

Washington, July 26, 1979.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,000,000,000 of United States securities, designated 9⅛% Treasury Bonds of 2004–2009 (CUSIP No. 912810 CG 1). The securities will be sold at auction with bidding on the basis of price. Payment will be required at the bid price of each accepted tender in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2.1. The securities offered will be identical to the 9⅛% Treasury Bonds of 2004–2009 (CUSIP No. 912810 CG 1) issued under Department of the Treasury Circular, Public Debt Series—No. 10–79, dated April 26, 1979, except that interest will accrue from August 15, 1979, and payment for the securities will be calculated on the basis of the auction price determined in accordance with this circular, plus accrued interest from May 15, 1979. With this exception, the securities are as described in the following excerpt from the above circular:

"2.1. The securities will be dated May 15, 1979, and will bear interest[1] from that date, payable on a semiannual basis on November 15, 1979, and each subsequent 6 months on May 15 and November 15, until the principal becomes payable. They will mature on May 15, 2009, but may be redeemed at the option of the United States on and after May 15, 2004, in whole or in part, at par and accrued interest on any interest payment date or dates, on 4 months' notice of call given in such manner as the Secretary of the Treasury shall prescribe. In case of partial call, the securities to be redeemed will be determined by such method as may be prescribed by the Secretary of the Treasury. Interest on the securities called for redemption shall cease on the date of redemption specified in the notice of call.

"2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

"2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

"2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

"2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date."

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Thursday, August 2, 1979. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, August 1, 1979.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the price offered, expressed on the basis of 100 with two decimals, e.g., 100.00. Common fractions may not be used. Only tenders at a price more than the original issue discount limit of 92.75 will

[1] On May 2, 1979, the Secretary of the Treasury announced that the interest rate on the bonds would be 9⅛ percent per annum.

be accepted. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified price. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and price range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the highest prices, through successively lower prices to the extent required to attain the amount offered. Tenders at the lowest accepted price will be prorated if necessary. Successful competitive bidders will be required to pay the price that they bid. Those submitting noncompetitive tenders will pay the weighted average price in two decimals of accepted competitive tenders. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the price. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the weighted average price of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made or completed on or before Wednesday, August 15, 1979, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted, and must include accrued interest from May 15 to August 15, 1979 in the amount of $22.81250 per $1,000 of securities allotted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Friday, August 10, 1979, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Thursday, August 9, 1979, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim

certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 79-23647 Filed 7-27-79; 12:21 pm]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on August 27, 1979, at 9:00 a.m., the Hartford, Connecticut, Regional Office Station Committee on Educational Allowances shall at Room 144, Veterans Administration Regional Office, 450 Main Street, Hartford, Connecticut, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in the Bridgeport Flight Service, Inc., Sikorsky Memorial Airport, Stratford, Connecticut 06497 should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: July 23, 1979.

Roger W. Brickey,

Director, VA Regional Office, 450 Main Street, Hartford, CT 06103.

[FR Doc. 79-23562 Filed 7-30-79; 8:45 am]

BILLING CODE 8320-01-M

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on Friday, August 24, 1979 at 10:00 am, the Denver, Regional Office Station Committee on Educational Allowances shall, in the Adjudication hearing room, Room B1221 of the Denver Veterans Administration Regional Office, Building 20, Denver Federal Center, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in the Real Estate Training Center of Colorado, 7350 West 44th Avenue, Wheat Ridge, Colorado, 80033, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of the law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

N. B. Alverson,

Director, VA Regional Office, Denver Federal Center, Denver, Colorado 80225.

[FR Doc. 79-23563 Filed 7-30-79; 8:45 am]

BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 29010F]

Canadian Pacific Limited and Canellus Incorporated—Control—Hutchinson and Northern Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption in Finance Docket No. 29010F.

SUMMARY: Canadian Pacific Limited (CPL), through Canellus Incorporated (CI) and certain other non-carrier subsidiaries, proposes to acquire all of the outstanding capital stock, and thus control, of the Hutchinson and Northern Railway Company (HN). Pursuant to 49 U.S.C. § 10505, the Commission is exempting the transaction from 49 U.S.C. §§ 11343–11347, thereby eliminating the requirement for prior Commission approval.

DATE: This decision shall be effective on August 31, 1979.

FOR FURTHER INFORMATION CONTACT: Michael Erenberg, 202–275–7245.

SUPPLEMENTAL INFORMATION:

On April 6, 1979, CPL and CI filed a petition under 49 U.S.C. § 10505 to exempt their acquisition of indirect control of HN from the requirements of 49 U.S.C. §§ 11343–11347. We published notice of the petition in the Federal Register on May 11, 1979, 44 Fed. Reg. 27783 (1979), requesting comments on the proposal. No comments have been received. The notice of proposed exemption described the petitioners, their affiliates, and the transaction, and we need only briefly summarize the facts here.

CPL operates an extensive railway system in Canada, connects with a number of United States railroads, and owns interests in several United States rail carriers subject to our jurisdiction. CPL also owns a majority interest in Canadian Pacific Investments Limited (CPI), a non-carrier through which CPL conducts all non-transportation related operations. CPI owns 100 percent of the outstanding capital stock of Canellus International N.V. (NV), which in turn owns 100 percent of the outstanding capital stock of CI. CI owns 100 percent of the outstanding capital stock of Processed Minerals Incorporated (PMI), a corporation recently organized to acquire, own, and operate certain assets to be purchased from Interpace Corporation (Interpace). Those assets include 100 percent of the outstanding capital stock of HN, a class III United States rail carrier.

Interpace is engaged in a number of lines of business, including the mining and processing of salt at Hutchinson, KS, and wollastonite at Willsboro, NY. Under the proposed transaction, CI would purchase for cash all of the Interpace assets used in the operation of those businesses, including all of the outstanding capital stock of HN. Upon consummation, all of the described assets would be conveyed to PMI in accordance with an agreement among CI, PMI, and Interpace.

Because CPL controls other United States rail carriers subject to our jurisdiction, its control of HN through CPI, NV, CI, and PMI would require our approval under 49 U.S.C. §§ 11343–11347. A request for our approval entails submission of an application complying with the Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Trackage Rights and Lease Procedures, 49 C.F.R. Part 1111 (1978), revised in part at 44 Fed. Reg. 2177 (1979) (consolidation procedures). In their petition, CPL and CI maintained that acquisition of indirect control of HN would be completely incidental to the purchase of the Interpace sand and wollastonite businesses, and that the transaction would have no impact on shippers, employees, other carriers, or the public, nor on the operations, administration, liabilities, or obligations of HN.

Discussion and Conclusions

As pertinent here, 49 U.S.C. § 10505 provides that we shall exempt a rail carrier transaction because of its limited scope when we find that application of a provision of subtitle IV of title 49, *United States Code*, (1) is not necessary to carry out the national transportation

policy, (2) would place an unreasonable burden on a person, class of persons, or interstate and foreign commerce, and (3) would serve little or no useful public purpose. We may act under 49 U.S.C. § 10505 only after an opportunity for a proceeding. The notice and request for comments on the petition for exemption provided that opportunity. We must now determine whether the proposed exemption meets the statutory requirements.

Scope of the transaction. The threshold inquiry is whether the transaction is limited in scope. CPL operates a 16,000 mile rail system in Canada; owns controlling interests in the Soo Line Railroad Company (a class I railroad), Canadian Pacific Lines in Maine (a class II railroad), and Aroostook Valley Railroad Company and Canadian Pacific Lines in Vermont (class III railroads); and operates Canadian Pacific Detroit Terminal (a class III switching and terminal facility). HN is a class III rail carrier owning 5.14 miles of track near Hutchinson, KS, and operating two switching locomotives. HN's tracks do not connect with and are geographically distant from the railroad facilities controlled by CPL.

HN does not generate a substantial volume of traffic. In 1977 the railroad handled 676 cars in switching operations and 3,029 cars in terminal operations. About 98 percent of its traffic derives from the Hutchinson, KS, salt business also being acquired from Interpace. Other traffic originates with a mobile home manufacturer and a grain elevator located along HN's track. The proposal thus would not afford a real opportunity for traffic diversion, and switching and terminal operations would continue in the same manner as presently conducted.

HN has no employees, all of its operations being conducted by Interpace personnel. None of HN's operating personnel is subject to any national railway labor agreement, but all participate in certain pension benefits under Interpace pension plans. Under the proposed agreement among CI, PMI, and Interpace, those employees would receive pension benefits at least equal to those now provided by Interpace.

The record demonstrates that the proposal would be without operational limit, competitive effect, or employee impact. We conclude that acquisition of control of HN by PMI, and indirect control by CI and CPL, would constitute a transaction of limited scope.

National transportation policy. To insure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, Congress has declared that it is the policy of the United States Government to provide for the impartial regulation of the modes of transportation subject to subtitle IV of title 49, *United States Code.* 49 U.S.C. § 10101. In regulating those modes, the transportation policy is to (1) recognize and preserve the inherent advantage of each mode; (2) promote safe, adequate, economic, and efficient transportation; (3) encourage sound economic conditions in transportation, including conditions among carriers; (4) encourage reasonable rates without unreasonable discrimination or unfair or destructive competitive practices; (5) cooperate with each State and its officials on transportation matters; and (6) encourage fair wages and working conditions in the transportation industry. *Id.*

We believe that advance scrutiny of PMI's control of HN, and in turn CI's and CPL's indirect control, is not necessary to carry out the national transportation policy. The proposed transaction should have no effect on any of the policy considerations since the only change involves indirect control of a minor rail carrier by a corporation which controls other rail carriers.

Burden. Our consolidation procedures require the filing of a complete application so that we might reach a decision within the time constraints imposed by 49 U.S.C. § 11345. Compilation of the necessary material is a time-consuming task, however, since much information must be presented in great detail to be useful. Where, as here, the public has voiced no opposition to the proposal, and the transaction is of limited scope and minimal transportation importance, the development of a massive record on which to base a decision would place a grave strain on scarce resources. We believe that requiring CPL, CI, PMI, HN and affiliates to prosecute an application under 49 U.S.C. §§ 11343–11347 would place an unreasonable burden on them and on interstate and foreign commerce.

Public purpose. Our function under 49 U.S.C. §§ 11343–11347 is to determine whether a proposed transaction is consistent with the public interest. In the absence of opposition, we rely principally upon the applicants' filings. Having found that the instant proposal is of limited scope, and that our regulation of it would be both unnecessary and unreasonably burdensome, we conclude that our review of the matter would serve little or no useful public purpose.

Waiver. As an alternative to exemption under 49 U.S.C. § 10505, CPL and CI sought waiver of certain provisions of our consolidation procedures. By notice dated April 27, 1979, we held the request for waiver in abeyance pending a decision on the petition for exemption. Our determination regarding exemption obviates a decision respecting waiver, and we shall dismiss the request.

We find: The acquisition of control of Hutchinson and Northern Railway Company by Processed Minerals Incorporated through the purchase by the latter of all of the outstanding capital stock of the former, and, in turn, the indirect control of Hutchinson and Northern Railway Company by Canellus Incorporated, Canellus International N.V., Canadian Pacific Investments Limited, and Canadian Pacific Limited, is a transaction of limited scope, and application of the requirements of 49 U.S.C. §§ 11343–11347, (1) is not necessary to carry out the transportation policy of 49 U.S.C. § 10101, (2) would be an unreasonable burden on the applicants and interstate and foreign commerce, and (3) would serve little or no useful public purpose.

This decision will not significantly affect the quality of the human environment or the level of energy consumption.

It is ordered: The acquisition of control of Hutchinson and Northern Railway Company by Processed Minerals Incorporated through the purchase by the latter of all of the outstanding capital stock of the former, and, in turn, the indirect control of Hutchinson and Northern Railway by Canellus Incorporated, Canellus International N.V., Canadian Pacific Investments Limited, and Canadian Pacific Limited, is exempted under 49 U.S.C. § 10505 from the requirements of 49 U.S.C. §§ 11343–11347.

If the parties consummate the transaction, Processed Minerals Incorporated and Canellus Incorporated shall confirm in writing to the Commission, immediately after consummation, the date on which consummation has actually taken place.

The exemption authorized by this decision shall remain in effect for three months following the effective date. Consummation pursuant to this exemption must take place during that time.

The request for waiver of consolidation procedures is dismissed.

Notice of the exemption shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and

by filing with the Director, Office of the Federal Register.

This decision shall be effective on July 31, 1979.

Dated: July 24, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Vice Chairman Brown not participating. Commissioner Clapp absent and not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-23516 Filed 7-30-79; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. 118]

Permanent Authority Application; Decision-Notice

Decided: July 10, 1979.

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, form and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application noticed, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace the extent to which petitioner's interest will be represented by other parties, the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon application if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

Agatha L. Mergenovich,

Secretary.

MC 732 (Sub-15F), filed April 16, 1979. Applicant: ALBINA TRANSFER CO., INC., 705 N. Cook, Portland, OR 97227. Representative: Lawrence V. Smart, 419 N.W. 23rd Ave., Portland, OR 97210. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *calcium carbide,* from Portland, OR, to points in CA, NV, and WA. (Hearing site: Portland, OR.)

MC 1103 (Sub-17F), filed April 19, 1979. Applicant: JOSEPH KOFMAN, FREDA K. GAINES, AND BENJAMIN KOFMAN, A Partnership, d.b.a. KOFMAN'S, 130 Dunlop Street, Bellefonte, PA 16823. Representative: John E. Fullerton, 407 N. Front Street, Harrisburg, PA 17101. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over

irregular routes, transporting (1) *metal articles, and materials, equipment, and supplies* used in the manufacture of metal articles, from the facilities of Cerro Metal Products, (a) at or near Bellefonte, PA, to points in DE, MD, WV, and VA, and (b) at or near Weyers Cave, VA, to points in CT, DE, IL, IN, MA, MD, MI, NJ, NY, OH, PA, RI, WV, and DC; and (2) *scrap metals, waste materials, and materials, equipment, and supplies* used in the manufacture of metal articles, in the reverse direction of (a) and (b) above, respectively. (Hearing site: Washington, DC.)

MC 9812 (Sub-13F), filed April 13, 1979. Applicant: C. F. KOLB TRUCKING CO., INC., R.R. 1, Box 294, Mt. Vernon, IN 47620. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except commodities in bulk, in tank vehicles), between the Henderson County Riverport Authority Facility, in Henderson County, KY, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX. Condition: The certificate issued in this proceeding, in so far as it authorizes the transportation of explosives, will be limited in point of time to a period expiring 5 years from the date of issuance of the certificate. (Hearing site: Louisville, KY, or Evansville, IN.)

MC 13123 (Sub-98F), filed April 17, 1979. Applicant: WILSON FREIGHT COMPANY, A Corporation, 11353 Reed Hartman Highway, Cincinnati, OH 45241. Representative: Milton H. Bortz (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of General Cable Corporation, at or near Pownal, VT, as an off-route point in connection with carrier's otherwise authorized regular-route authority. (Hearing site: Cincinnati, OH, or Washington, DC.)

MC 47583 (Sub-91F), filed April 2, 1979. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, KS 66115. Representative: D. S. Hults, P.O. Box 225, Lawrence, KS 66044. To operate as *common carrier*, by motor vehicle, in interstate commerce, over irregular routes, transporting, *materials, equipment, and supplies* used in the manufacture and distribution of *fiberglass insulation and insulating products*, (except commodities in bulk, and those which because of size or weight require the use of special equipment), from points in the United States (except AK, HI, and TX), to the facilities of Johns Manville Sales Corp., at or near Cleburne, TX. (Hearing site: Kansas City, MO.)

MC 47583 (Sub-93F), filed April 19, 1979. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, KS 66115. Representative: D. S. Hults, P.O. Box 225, Lawrence, KS 66044. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular rotues, transporting *feed and feed ingredients*, and *materials, equipment, and supplies* used in the manufacture and distribution of feed and feed ingredients, (except commodities in bulk), between the facilities of Kal Kan Foods, Inc., at or near (a) Los Angeles, CA, and (b) Ogden, UT, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Kal Kan Foods, Inc. (Hearing site: Kansas City, MO.)

MC 47583 (Sub-94F), filed April 19, 1979. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, KS 66115. Representative: D. S. Hults, P.O. Box 225, Lawrence, KS 66044. To operate as a *common carrier*, by motor carrier, in interstate or foreign commerce, over irregular routes, transporting *feed and feed ingredients*, and *materials, equipment, and supplies* used in the manufacture and distribution of feed and feed ingredients, (except commodities in bulk), between the facilities of Kal Kan Foods, Inc., at or near (a) Hutchinson, KS, (b) Terre Haute, IN, and (c) Columbus, OH, on the one hand, and, on the other, points in the Unted States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Kal Kan Foods, Inc. (Hearing site: Kansas City, MO.)

MC 61592 (Sub-447F), filed April 12, 1979. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN 47130. Representative: E. A. DeVine, P.O. Box 737, Moline, IL 61265. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *glass products, and materials, equipment, and supplies used in the manufacture or distribution of glass products*, (except commodities in bulk), between Columbus, OH, on the one hand, and, on the other, points in the United States (except AK, HI, and OH); (2)(a) *glass beads, glass spheres, and thermal plastic marking materials*, and (b) *such commodities as are used in the installation of the commodities named in (2)(a)*, (except commodities in bulk), from the facilities of Cataphote Division of Ferro Corporation, at or near Jackson, MS, to points in CT, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA, WV, and WI; and (3) *materials, equipment, and supplies used in the manufacture or distribution of the commodities named in (2)*, (except commodities in bulk), in the reverse direction. (Hearing site: Louisville, KY.)

MC 61592 (Sub-451F), filed April 6, 1979. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN 47130. Representative: E. A. DeVine, P.O. Box 737, Moline, IL 61265. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *expanded plastic products with facing on one or more sides*, (except commodities in bulk), between Hamilton, OH, on the one hand, and, on the other, those points in the United States on and east of U.S. Hwy 85. (Hearing site: Louisville, KY.)

MC 68123 (Sub-5F), filed April 16, 1979. Applicant: MARIE R. CAVALLERI, d.b.a. M & J TRUCKING COMPANY, 220 Eilot St., Fairfield, CT 06430. Representative: James M. Burns, Johnson's Bookstore Bldg., 1383 Main St., Suite 413, Springfield, MA 01103. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *zinc and zinc alloys*, from the facilities of St. Joe Zinc Company, at Josephtown, PA, to points in CT, MA, NY, and RI. (Hearing site: Hartford, CT, or Springfield, MA.)

MC 80443 (Sub-19F), filed April 16, 1979. Applicant: OVERNITE EXPRESS, INC., 2550 Long Lake Rd., Roseville, MN 55113. Representative: Samuel Rubenstein, 301 N. Fifth St., Minneapolis, MN 55403. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *anti-freeze compounds and de-icing compounds*, (except commodities in bulk), *anti-freeze pressure tanks, de-icing pressure tanks, and vaporizers*, from the facilities of Tanner Systems, Inc., at or near Sauk Rapids, MN, to points in the United States (except AK and HI). (Hearing site: Minneapolis or St. Paul, MN.)

MC 105813 (Sub-254F), filed April 13, 1979. Applicant: BELFORD TRUCKING CO., INC., 1759 S.W. 12th St., P.O. Box 2009, Ocala, FL 32670. Representative: Arnold L. Burke, 180 N. LaSalle St., Chicago, Il 60601. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *liquid chocolate products*, in bulk, in tank vehicles, from the facilities of M&M/Mars, a division of Mars, Inc., at or near (a) Chicago, IL, and (b) Elizabethtown, PA, to the facilities of M&M/Mars, a division of Mars, Inc., at or near Cleveland, TN. (Hearing site: Chicago, IL.)

MC 105813 (Sub-255F), filed April 13, 1979. Applicant: BELFORD TRUCKING CO., INC., 1759 S.W. 12th St., P.O. Box 2009, Ocala, FL 32670. Representative: Arnold L. Burke, 180 N. LaSalle St., Chicago, IL 60601. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *meats, meat products, meat byproducts, dairy products, and articles distributed by meat-packing houses*, as described in Sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except commodities in bulk), and (2) *foodstuffs* (except those named in (1) above), when moving in mixed loads with the commodities named in (1) above, in vehicles equipped with mechanical refrigeration, from Milan, IL, to points in AL, FL, GA, NC, SC, and TN (except Memphis). (Hearing site: Chicago, IL.)

MC 107012 (Sub-356F), filed April 11, 1979. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *furniture and fixtures*, uncartoned, (1) from points in AL, FL, GA, NC, SC, and VA, to points in CT, DE, MD, MA, NH, NJ, NY, PA, RI, VT, and DC, and (2) from points in CT, MD, MA, NH, NJ, NY, PA, RI, and VT, to points in AL, FL, GA, NC, SC, and VA. (Hearing site: Miami, FL, or New York, NY.)

MC 107403 (Sub-1189F), filed April 4, 1979. Applicant: MATLACK, INC., 10 W. Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum, petroleum products, and chemicals*, in bulk, between the facilities of Ashland Oil, Inc., in (a) Boyd County, KY, (b) Lawrence County, OH, and (c) Wayne County, WV, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing site: Washington, DC.)

MC 111812 (Sub-623F), filed April 17, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: Lamoyne Brandsma (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *salad dressings*, (except in bulk), from the facilities of Western Dressing, Inc., at or near Grundy Center, IA, to points in CA. (Hearing site: Des Moines, IA, or Washington, DC.)

MC 111812 (Sub-624F), filed April 16, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: Lamoyne Brandsma (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic articles and cardboard corrugated trays*, from Lonsdale, MN, to points in CA, OR, and WA, restricted to the transportation of traffic originating at the named origin. (Hearing site: San Diego, CA.)

MC 111812 (Sub-626F), filed April 16, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: Lamoyne Brandsma (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities as are dealt in by manufacturers of floors, floor coverings, walls, and wall coverings*, (except commodities in bulk), from Kalamazoo, MI, and Dayton, OH, and points in Los Angeles County, CA, to points in the United States (except AK and HI); and (2) *materials, equipment, and supplies used in the manufacture or distribution of the commodities named in (1)*, (except commodities in bulk), in the reverse direction, restricted, in (1) and (2), to the transportation of traffic originating at or destined to the facilities of Roberts Consolidated Industries. (Hearing site: Los Angeles, CA.)

MC 111812 (Sub-628F), filed April 17, 1979. Applicant: MIDWEST COAST TRANSPORT, INC. P.O. Box 1233, Sioux Falls, SD 57101. Representative: Lamoyne Brandsma (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *games and toys*, (2) *plastic articles*, and (3) *hobby and craft supplies*, from points in NY and PA, to Des Moines, IA, restricted to the transportation of traffic originating at or destined to the facilities of Parker Brothers. (hearing site: Boston, MA.)

MC 114273 (Sub-587F), filed April 19, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from Wilton, IA, to points in MD, PA, and NY. (Hearing site: Chicago, IL or Washington, DC.)

MC 114273 (Sub-588F), filed April 19, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *construction machinery and parts* for construction machinery, (except commodities the transportation of which because of size or weight requires the use of special equipment), (a) from Bowling Green and Lexington, KY, to Chicago, IL and (2) from Cedar Rapids, IA, to Bowling Green and Lexington, KY; (2) (a) *synthetic strapping, film or sheeting* (except cellulose), *seals, buckles, hooks, and staples*, (b) *tools and stands* for the commodities in (2)(a) above, and (c) *plastic articles*, from Downingtown, PA, to points in IL, MO, WI, MN, NE, CO, MI, and IA; and (3) *edible cellulose flour* (except in bulk, in tank vehicles), from Newark, DE, to points in IN, IA, IL, KY, MN, MO, MI, OH, and WI, restricted in (1), (2), and (3) above to the transportation of traffic originating at or destined to the facilities of FMC Corporation. (Hearing site: Chicago, IL, or Washington, DC.)

MC 115162 (Sub-475F), filed April 12, 1979. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *poleline hardware, transmission equipment, and transformers*, and (2) *parts* for the commodities in (1) above, (a) from Centralia and Washington, MO, to points in NC, SC, GA, FL, AL, MS, LA, those points in TX on and east of Interstate Hwy 35, AR, TN, those points in VA on and east of Interstate Hwy 95, and (b) from Houston, TX, to points in LA, AR, MO, IA, MN, WI, IL, TN, KY, MS, AL, FL, SC, NC, GA, OH, MI, VA,

WV, PA, NY, VT, NH, MA, CT, RI, ME, NJ, DE, MD, and IN, and (3) *crane and derrick parts,* from Houston, TX, to points in LA, AR, MO, IA, MN, WI, IL, TN, KY,, MS, AL, FL, SC, NC, GA, OH, MI, VA, WV, PA, NY, VT, NH, MA, CT, RI, ME, NJ, DE, MD, and IN. (Hearing site: Houston, TX or St. Louis, MO.)

MC 115162 (Sub-76F), filed April 13, 1979. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *livestock equipment* from Lester Prairie, MN, Duncan, OK, and Pittsburg and Dodge City, KS, to the facilities of B & W Feed Service at or near Lawrence, MS. (Hearing site: Memphis, TN or Washington, DC.)

MC 115162 (Sub-77F), filed April 12, 1979. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except commodities in bulk, in tank vehicles), between the Henderson County Riverport Authority Facility, in Henderson County, KY, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX. Condition: The certificate issued in this proceeding, in so far as it authorizes the transportation of explosives, will be limited in point of time to a period expiring 5 years from the date of issuance of the certificate. (Hearing site: Louisville, KY, or Evansville, IN.)

MC 115322 (Sub-70F), filed April 16, 1979. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, FL 32809. Representative: L. W. Fincher, P.O. Box 426, Tampa, FL 33601. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs, (except commodities in bulk),* in vehicles not requiring mechanical refrigeration, from the facilities of Ragu' Foods, Rochester, NY, to points in VA, and those points in MD and PA on and east of U.S. Hwy 15. (Hearing site: New York, NY.)

MC 115762 (Sub-15F), filed April 17, 1979. Applicant: KENTUCKY WESTERN TRUCK LINES, INC., P.O. Box 623, Hopkinsville, KY 42240. Representative: William L. Willis, 708 McClure Building, Frankfort, KY 40601. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *coiled steel,* from the facilities of (1) J. & L. Steel, at or near Hennepin, IL, and (2) Inland Steel Company, at or near East Chicago, IN, to the facilities of the York Division of Borg Warner, at or near Madisonville, KY. (Hearing site: Hopkinsville, KY, or Evansville, IN.)

MC 116063 (Sub-158F), filed April 16, 1979. Applicant: WESTERN-COMMERCIAL TRANSPORT, INC., P.O. Box 270, Fort Worth, TX 76101. Representative: W. H. Cole (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *articles distributed by meat-packing houses,* as described in Section C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, *and meat byproducts,* in bulk, in tank vehicles, from the facilities of MBPXL Corporation, at or near Dodge City, KS, to points in AR, CO, IL, IN, IA, LA, MS, MO, NE, NM, OK, TN, and TX, restricted to the transportation of traffic originating at the named origin. (Hearing site: Wichita, KS, or Fort Worth, TX.)

MC 116273 (Sub-227F), filed April 4, 1979. Applicant: D & L TRANSPORT, INC., 3800 S. Laramie Ave., Cicero, IL 60650. Representative: William R. Lavery (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *liquid chemicals,* in bulk, in tank vehicles, from Toledo, OH, to points in MI. (Hearing site: Chicago, IL.)

MC 116513 (Sub-3F), filed April 12, 1979. Applicant: RICHARD N. GRAHAM, 311 Burlington Rd., Pittsburgh, PA 15221. Representative: Jerome Solomon, 3131 U.S. Steel Bldg., Pittsburgh, PA 15219. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *counter weights for elevators, tractors, and earth moving equipment,* (2) *pile driving circles,* and (3) *steel plates,* from the facilities of Tygart Industries, Inc., at Chicago, IL, to points in CT, DE, IN, IA, KY, MD, MA, MI, MN, MO, NJ, NY, NC, OH, PA, SC, TN, VA, WV, WI, and DC, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations, under continuing contract with Tygart Industries, Inc., of McKeesport, PA. (Hearing site: Pittsburgh, PA.)

MC 117883 (Sub-244F), filed April 16, 1979. Applicant: SUBLER TRANSFER, INC., One Vista Drive, Versailles, OH 45380. Representative: Neil E. Hannan, P.O. Box 62, Versailles, OH 45380. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities* as are manufactured, dealt in or distributed by sporting goods stores, between the facilities of Frabill Manufacturing Company, a Division of Huffy Corporation, at or near Milwaukee, WI, on the one hand, and, on the other, points in NE, KS, and those in the United States in, east, and north of MN, IA, MO, KY, and VA, (2)(a) *bicycles and tricycles,* (b) *parts for bicycles and tricycles,* and (c) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in 2 (a) and (b) above, between the facilities of Huffy Corporation, at or near Celina, OH, on the one hand, and, on the other, points in NE, KS, and those in the United States in, east, and north of MN, IA, MO, KY, and VA, and (3)(a) *automotive parts, accessories and service equipment,* and (b) *materials, equipment and supplies* used by automotive service and supply dealers, between the facilities of Huffy Corporation, at or near Delphos, OH, on the one hand, and, on the other, points in NE, KS, and those in the United States in, east, and north of MN, IA, MO, KY, and VA restricted to (1), (2) and (3) above to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Dayton, OH, or Washington, DC.)

MC 117993 (Sub-16F), filed April 2, 1979. Applicant: FRUITBELT TRUCKING INC., 12 Smith Street, St. Catharines, Ontario, Canada L2P 3H9. Representative: Robert D. Gunderman, Esq., Suite 710, Statler Building, Buffalo, NY 14202. To operate as a *common carrier,* by motor vehicle, in or foreign commerce only, over irregular routes, transporting *alcoholic beverages,* (except in bulk, in tank vehicles), from ports of entry on the international boundary line between the United States and Canada, located in NY and MI, to points in the United States (excluding AK and HI), restricted to the transportation of traffic originating at the facilities of (a) Gilbey Canada Limited, Toronto, Ontario, Canada, and (b) Hiram Walker & Sons Ltd., Walkerville and Toronto, Ontario, Canada. (Hearing site: Buffalo, NY.)

MC 118142 (Sub-225F), filed April 8, 1979. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes,

transporting *automotive, industrial, and tractor tires and tubes,* from Huntsville, AL, and Buffalo, NY, to Wichita, KS. (Hearing site: Wichita, KS, or Kansas City, MO.)

MC 118263 (Sub-82F), filed April 9, 1979. Applicant: COLDWAY CARRIERS, INC., P.O. Box 2038, Clarksville, IN 47130. Representative: William P. Whitney, Jr., 708 McClure Bldg., Frankfort, KY 40601. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foods and food ingredients* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, between the facilities of Morton Frozen Foods, at or near Crozet, VA, on the one hand, and, on the other, points in CT, IL, IN, KY, ME, MA, MI, NH, NJ, NY, OH, PA, RI, VT, and WV, restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Charlottesville or Richmond, VA.)

MC 119493 (Sub-282F), filed April 13, 1979. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, Mo 64801. Representative: Thomas D. Boone (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *furniture parts,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above (except in bulk), between points in AL, AR, CT, DE, FL, GA, IL, IA, IN, KS, KY, LA, MO, MA, MI, MN, MD, MS, NJ, NC, NY, NE, OH, OK, PA, RI, SC, TN, TX, VA, WV, and WI, restricted to the transportation of traffic originating at or destined to the facilities of Leggett & Platt, Inc. (Hearing site: Kansas City or Springfield, MO.)

MC 119493 (Sub-283F), filed April 16, 1979. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, Mo 64801. Representative: Thomas D. Boone (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles,* from the facilities of Armco, Inc., at or near (a) Ashland, KY, and (b) Middletown, OH, to points in AR, KS, MO, IA, MN, NE, OK, TX, CO, MS, and LA. (Hearing site: Cincinnati, OH, or St. Louis, MO.)

MC 123872 (Sub-103F), filed April 9, 1979. Applicant: W & L MOTOR LINES, INC., P.O. Box 3467, Hickory, NC 28601. Representative: Allen E. Bowman (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts,* and *articles distributed by meat-packing houses,* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except hides and commodities in bulk, in tank vehicles), from the facilities of The Rath Packing Company, at (a) Indianapolis, IN, and (b) Waterloo, IA, to points in VA, WV, GA, and those in TN on and east of Interstate Hwy 65. (Hearing site: Waterloo, IA, or Washington, D.C.)

Note.—Dual operations may be involved.

MC 124692 (Sub-276F), filed April 9, 1979. Applicant: SAMMONS TRUCKING, a corporation, P.O. Box 4347, Missoula, MT 59806. Representative: J. David Douglas (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *roofing and roofing materials,* from the facilities of GAF Corporation, at Denver, CO, to points in CA. (Hearing site: Denver, CO.)

MC 125433 (Sub-239F), filed April 9, 1979. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, tranporting (1) *tractors,* (2) *industrial, construction, and excavating equipment,* (3) *material-handling equipment,* and (4) *parts and attachments* for the commodities in (1), (2), and (3) above, from the facilities of J. I. Case Company, at or near Bettendorf and Burlington, IA, to points in AR, CA, ID, LA, MS, MT, NV, OK, OR, TX, UT, and WA. (Hearing site: Washington, DC.)

MC 125433 (Sub-246F), filed April 16, 1979. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *gas fired and electric water heaters, and heating boilers,* from Newark, CA, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the facilities of A. O. Smith Corporation. (Hearing site: San Francisco, CA.)

MC 125433 (Sub-247F), filed April 17, 1979. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *fabricated structural iron and steel articles* (except commodities in bulk), from Grand View, MO, and Stafford, KS, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the facilities of Mid-States Metal-Lines, Inc. (Hearing site: Denver, CO, or Salt Lake City, UT.)

MC 125433 (Sub-248F), filed April 17, 1979. Applicant: F-B TRUCK LINE COMPANY, a corporatioin, 1945 S. Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *concrete paving machinery, and parts and accessories for concrete paving machinery,* (except commodities in bulk), between Cedar Falls, IA, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at the facilities of Curbmaster of America, Inc. (Hearing site: Chicago, IL, or Washington, DC.)

MC 127042 (Sub-257F), filed April 9, 1979. Applicant: HAGEN, INC., P.O. Box 98—Leeds Station, Sioux City, IA 51108. Representative: Robert G. Tessar (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities,* as are dealt in by grocery and food business houses and drug and discount stores, and (2) *materials, equpiment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities of S. C. Johnson & Sons, Inc., at Waxdale and Racine, WI, on the one hand, and, on the other, points in CO, IN, IA, KS, MN, MO, NE, ND, and SD. (Hearing site: Milwaukee, WI.)

MC 127042 (Sub-258F), filed April 9, 1979. Applicant: HAGEN, INC., P.O. Box 98—Leeds Station, Sioux City, IA 51108. Representative: Robert G. Tessar (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *glass bottles,* from Joliet, IL, to Cedar Rapids and Iowa City, IA. (Hearing site: Chicago, IL.)

MC 127042 (Sub-260F), filed April 9, 1979. Applicant: HAGEN, INC., P.O. Box 98—Leeds Station, Sioux City, IA 51108. Representative: Robert G. Tessar (same

address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities,* as are dealt in by grocery and food business houses (except frozen commodities and commodities in bulk), from the facilities of The Clorox Company, at Kansas City, MO, to points in CO. (Hearing site: Kansas City, MO.)

MC 127042 (Sub-261F), filed April 12, 1979. Applicant: HAGEN, INC., P.O. Box 98-Leeds Station, Sioux City, IA 51108. Representative: Robert G. Tessar (same address as applicant.) To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products, meat byproducts, and articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from Davenport, IA, to Cherokee, Des Moines, and Laurens, IA. (Hearing site: Madison, WI.)

MC 127303 (Sub-57F), filed April 19, 1979. Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 61326. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh Street, NW, Washington, DC 20001. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *glass containers* and *closures* for containers, from the facilities of Ball Corporation, at or near Mundelein, North Chicago, and Chicago, IL, to points in IA, MN, WI, and MO. (Hearing site: Chicago, IL.)

MC 127902 (Sub-10F), filed April 16, 1979. Applicant: DIETZ MOTOR LINES, INC., P.O. Box 1427, Hickory, NC 28601. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., NW, Washington, DC 20004. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *sugar,* in containers, from Matthews, LA, to points in AL, AR, GA, MS, NC, SC, and TN. (Hearing site: Washington, DC, or Hickory, NC.)

MC 129923 (Sub-17F), filed April 9, 1979. Applicant: SHIPPER'S TRANSPORTS, INC., 5005 Commerce Street, West Memphis, AR 72301. Representative: Edward G. Grogan, Suite 2020, First Tennessee Building, Memphis, TN 38103. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *canned foodstuffs,* from Milton, DE, to points in TX. (Hearing site: Washington, DC, or Baltimore, MD.)

MC 133302 (Sub-5F), filed April 9, 1979. Applicant: WICHITA SOUTHEAST KANSAS TRANSIT, INC., P.O. Box G, Parsons, KS 67357. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Ave., Kansas City, MO 64125. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Joplin, MO, and Fort Scott, KS, from Joplin over MO Hwy 171 to junction KS Hwy 57, then over KS Hwy 57 to junction U.S. Hwy 69, then over U.S. Hwy 69 to Fort Scott, and return over the same route; (2) between Carthage, MO, and junction KS Hwy 96 and U.S. Hwy 69, from Carthage over MO Hwy 96 to junction KS Hwy 96, then over KS Hwy 96 to junction U.S. Hwy 69, and return over the same route; (3) between Springfield and Carthage, MO, from Springfield over Interstate Hwy 44 to junction MO Hwy 96, then over MO Hwy 96 to Carthage, and return over the same route, (4) between Springfield, MO, and Riverton, KS, from Springfield over Interstate Hwy 44 to Joplin, MO, then over Interstate Hwy 44 to junction U.S. Hwy 166, then over U.S. Hwy 166 to junction KS Hwy 26, then over KS Hwy 26 to Riverton, and return over the same route; and (5) between South Coffeyville, OK, and Coffeyville, KS, over U.S. Hwy 169, serving in connection with (1) through (5) above all intermediate points. (Hearing site: Wichita, KS, or Pittsburg, KS.)

MC 135052 (Sub-17F), filed April 17, 1979. Applicant: ASHCRAFT TRUCKING, INC., 875 Webster St., Shelbyville, IN 46176. Representative: Warren C. Moberly, 320 N. Meridian St., Indianapolis, IN 46204. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *plastics,* from Edinburg, IN, to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MO, MS, NE, NH, NJ, NC, NY, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, and WI; and (2) *materials and supplies used in the manufacture or distribution of plastic articles,* (except in bulk, in tank or dump vehicles), in the reverse direction. (Hearing site: Indianapolis, IN, or Louisville, KY.)

MC 136212 (Sub-28F), filed April 17, 1979. Applicant: JENSEN TRUCKING COMPANY, INC., P.O. Box 349, Gothenburg, NE 69138.Representative: Scott T. Robetson, 521 S. 14th St., P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *feed, feed ingredients, and feed supplements,* from Lubbock, TX, to points in AL, SD, AR, CO, GA, IA, IL, KS, MS, MO, NE, NM, OK, and TN. (Hearing site: Omaha, NE, or Lubbock, TX.)

MC 138882 (Sub-238F), filed April 13, 1979. Applicant:WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401.To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except commodities in bulk, in tank vehicles), between the Henderson County Riverport Authority Facility, in Henderson County, KY, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX. Condition: The certificate issued in this proceeding, in so far as it authorizes the transportation of explosives, will be limited in point of time to a period expiring 5 years from the date of issuance of the cetificate. (Hearing site: Louisville, KY, or Evansville, IN.)

MC 140273 (Sub-17F), filed April 16, 1979. Applicant: BUESING BROS, TRUCKING, INC., 2285 Daniels St., Long Lake, MN 55356.Representative: Robert S. Lee, 1000 First National Bank, Minneapolis, MN 55402.To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *Coal tar emulsions, roof coatings and cements, and driveway and tennis court sealers,* (except commodities in bulk), from the facilities of Central-Allied Enterprises, Inc., at Hopkins, MN, to points in IA, WI, ND, and SD; and (2) *materials, equipment, and supplies used in the manufacture or distribution of commodities named in (1),* (except commodities in bulk), from Compton, IL, to the facilities of Central-Allied Enterprises, Inc., at Hopkins, MN. (Hearing site: Minneapolis or St. Paul, MN.)

MC 140553 (Sub-9F), filed April 9, 1979. Applicant: ROGERS TRUCK LINE, INC., 801 Erie Street, Logansport, IN 46947. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and*

meat byproducts, and *articles distributed by meat-packing houses,* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at Logansport, IN, to Plainfield, IL, and points in Cook County, IL, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Dallas, TX, or Kansas City, MO.)

MC 140553 (Sub-10F), filed April 9, 1979. Applicant: ROGERS TRUCK LINE, INC., 801 Erie Street, Logansport, IN 46947. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts,* and *articles distributed by meat-packing houses,* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at Logansport, IN, to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, and DC, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Dallas, TX, or Kansas City, MO.)

MC 140952 (Sub-2F), filed April 16, 1979. Applicant: REFRIGERATED EXPRESS, INC., 720 12th St., Huntington, WV 25701. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities as are dealt in by grocery and food business houses,* from Huntington, WV, to points in VA and WV. (Hearing site: Charleston, WV.)

MC 141032 (Sub-2F), filed April 10, 1979. Applicant: ALCO BUS CORPORATION, 715 S. Pearl St., Janesville, WI 53545. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *newspapers, and parcels weighing no more than 150 pounds each,* when moving in the same vehicle with passengers and their baggage, between Madison, WI, and O'Hare International Airport, at or near Chicago, IL, from Madison over U.S. Hwy 12 to junction Interstate Hwy 90, then over Interstate Hwy 90 to junction WI Hwy 26, then over WI Hwy 26 to junction Interstate Hwy 90, then over Interstate Hwy 90 to junction WI Hwy 15, then over WI Hwy 15 to junction U.S. Hwy 51, then over U.S. Hwy 51 to junction IL Hwy 75, then over IL Hwy 75 to junction Interstate Hwy 90, then over Interstate Hwy 90 to O'Hare International Airport, and return over the same route, serving the intermediate points of Janesville and Beloit, WI, and South Beloit, IL. (Hearing site: Milwaukee, WI, or Chicago, IL.)

Note.—Applicant presently holds authority in MC-141032 (Sub-No. 1F) to transport passengers and their baggage over the routes described above.

MC 141402 (Sub-34F), filed April 12, 1979. Applicant: LINCOLN FREIGHT LINES, INC., P.O. Box 427, Lapel, IN 46051. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities as are dealt in or used by manufacturers of paper and paper articles,* (except commodities in bulk and waste paper), and (2) *waste paper,* between points in IL, IN, KY, MI, MO, and OH, restricted, in (1) only, to the transportation of traffic originating at or destined to the facilities of Alton Box Board Company, at (a) Chicago, Galesburg, Beardstown, Godfrey, Highland, and Alton and Federal, IL, (b) Lafayette, Aurora, and Evansville, IN, (c) Columbus, OH, (d) St. Louis and Pacific, MO, and (e) Lexington, Bowling Green, and Louisville, KY, under continuing contract with Alton Box Board Company, of Alton, IL. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 141443 (Sub-16F), filed April 16, 1979. Applicant: JOHN LONG TRUCKING, INC., 1030 East Denton, Sapulpa, OK 74066. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities as are dealt in by grocery and food business houses,* (except frozen commodities and commodities in bulk), from the facilities of The Clorox Company (a) at Kansas City, MO, to points in CO and OK, (b) at Houston, TX, to points in OK, (c) at Oakland, CA, to points in ID, OR, UT, and WA, and (d) at Sparks, NV, to the facilities of The Clorox Company, at (1) Kansas City, MO, and (2) Houston, TX. (Hearing site: San Francisco, CA, or Tulsa, OK.)

Note.—Dual operations may be involved.

MC 142432 (Sub-2F), filed April 9, 1979. Applicant: NORMAN R. JACKSON d.b.a. N. R. JACKSON, R.D. #1, Box 258A, Oxford, PA 19363. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *hard surface floor coverings* and *materials and supplies* used in the installation and maintenance of hard surface floor coverings, from the facilities of Armstrong Cork Company, in Lancaster, PA, and the Township of East Hempfield (Lancaster County), PA, to points in CA and TX, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Washington, DC, or Harrisburg, PA.)

Note.—Dual operations may be involved.

MC 142463 (Sub-5F), filed April 5, 1979. Applicant: SPECIALIZED HAULING, INC., 1500 Omaha Street, P.O. Box 567, Sioux City, IA 51102. Representative: Stewart A. Huff, 314 Security Bank Bldg., Sioux City, IA 51101. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *hides, chromes, splits, and tannery products, supplies, and by-products,* (except commodities in bulk, in tank vehicles), (1) from Sioux City, IA, to points in CA, IL, KY, ME, MD, MA, MI, MN, MO, NH, NJ, NY, NC, OH, PA, TN, VA, WV, and WI, and (2) from points in MN, NE, ND, and SD, to Sioux City, IA. (Hearing site: Sioux City, IA.)

Note.—Dual operations may be involved.

MC 142792 (Sub-4F), filed April 6, 1979. Applicant: DENNIS I. OLSON, d.b.a. TWO WAY TRUCKING, #4 Ginger Cove Road, Valley, NE 68064. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts,* and *articles distributed by meat-packing houses,* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at Omaha, NE, to points in CT, DE, ME, MD, MA, MH, NJ, NY, PA, RI, VT, VA, and DC, restricted to the transportation of traffic originating at the named origin and

destined to the indicated destinations. (Hearing site: Dallas, TX, or Kansas City, MO.)

MC 143223 (Sub-3F), filed April 6, 1979. Applicant: CARL CRAWFORD, d.b.a. CRAWFORD'S MOBILE HOMES, North Road, Houlton, ME 04730. Representative: Virginia E. Davis, P.O. Box 986, Augusta, ME 04330. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *trailers designed to be drawn by passenger automobiles*, (except travel trailers and camping trailers), in initial movements, in truckaway service, and (2) *prefabricated buildings*, complete or in sections, from Oxford, ME, to points in NH, VT, MA, RI, CT, and NY, under continuing contract(s) with Oxford Homes, of Oxford, ME. (Hearing site: Portland, ME, or Boston, MA.)

MC 144622 (Sub-63F), filed April 17, 1979. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72206. Representative: Phillip G. Glenn (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *frozen foods*, from points in WA, OR, and ID, to points in GA, IL, NY, MA, TX, NC, OH, KY, IA, TN, FL, PA, MD, KS, MO, WI, MI, VA, WV, and IN. (Hearing site: Washington, DC, or Portland, OR.)

MC 144622 (Sub-64F), filed April 17, 1979. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Theodore Polydoroff, 1307 Dolley Madison Blvd., Suite 301, McLean, VA 22101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *electrical lighting fixtures and equipment*, and (2) *parts and accessories* for the commodities in (1) above, from the facilities of Gibson-Metalux Corporation, at or near Americus, GA, to points in the United States (except AK and HI). (Hearing site: Atlanta, GA or Washington, DC.)

MC 144682 (Sub-9F), filed April 13, 1979. Applicant: R. R. STANLEY, P.O. Box 95, Mesquite, TX 75149. Representative: D. Paul Stafford, Suite 1125, Exchange Park, Dallas, TX 75245. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *prepared foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of The Pillsbury Company, at Denison, TX, to points in AZ, CA, CO. ID, MT, NE, NV, NM, OR, UT, SD, and WA. (Hearing site: Dallas, TX.)

MC 144682 (Sub-10F), filed April 13, 1979. Applicant: R. R. STANLEY, P.O. Box 95, Mesquite, TX 75149. Representative: E. Larry Wells, Suite 1125, Exchange Park, Dallas, TX 75245. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *clay glaze tile*, from Dallas and Laredo, TX, to points in the United States (except AK and HI). (Hearing site: Dallas, TX)

MC 144772 (Sub-4F), filed April 9, 1979. Applicant: PINE PRAIRIE TRUCKING, INC., P.O. Box 305, Hamburg, AR 71646. Representative: James M. Duckett, 927 Pyramid Life Bldg., Little Rock, AR 72201. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *soybean meal*, in bulk, from Memphis, TN, to points in AR, LA, and MS, under continuing contract(s) with Ralston Purina Company, of St. Louis, MO. (Hearing site: Little Rock, AR.)

MC 145102 (Sub-20F), filed April 16, 1979. Applicant: FREYMILLER TRUCKING, INC., P.O. Box 188, Shullsburg, WI 53586. Representative: Mark C. Ellison, 1200 Gas Light Tower, 235 Peachtree St. NE., Atlanta, GA 30303. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products, meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C 209 and 766 (except hides and commodities in bulk), from the facilities of (1) Armour & Co., at Mason City, IA, and (2) Lauridsen Foods, Inc., at or near Britt, IA, to points in CA, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Chicago, IL, or St. Paul, MN.)

Note.—Dual operations may be involved.

MC 145442 (Sub-1F), filed April 16, 1979. Applicant: COSSAIR MARINE, INC., 4634 Glenwood Ave., La Crescenta, CA 91214. Representative: David P. Christianson, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *boats, and equipment and accessories for boats*, between points in Los Angeles County, CA, on the one hand, and, on the other, points in OR, WA, MN, WI, IL, IN, MI, OH, NY, RI, PA, ME, VT, NH, MA, CT, FL, NJ, DE, VA, NC, SC, GA, AL, MS, LA, TX, and MD. (Hearing site: Los Angeles, CA.)

MC 145543 (Sub-1F), filed April 12, 1979. Applicant: SAMUEL J. INMAN, d.b.a. GOLDEN STATE COURIERS, 1387 Lowrie Ave., South San Francisco, CA 94080. Representative: Lee H. Harter, 2822 Van Ness Ave., San Francisco, CA 94109. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between South San Francisco, CA, on the one hand, and, on the other, points in Marin, Sonoma, Napa, Solano, Contra Costa, San Joaquin, Stanislaus, Merced, Madera, Fresno, San Benito, Monterey, Santa Clara, Santa Cruz, Alameda, San Francisco, and San Mateo Counties, CA, restricted to the transportation of traffic having a prior or subsequent movement by air. (Hearing site: San Francisco, CA.)

MC 145863 (Sub-2F), filed April 12, 1979. Applicant: LOUIS D. WEILAND AND RONALD K. TOWNS, a Partnership, d.b.a. T & W TRUCKING COMPANY, 1815 Twelfth Ave. North, Escanaba, MI 49829. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *foodstuffs*, from Cornell, MI, to Chicago, IL, under continuing contract with Superior Frozen Carrots and Vegetables, of Cornell, MI; (2) *foodstuffs, paper products, and materials, equipment, and supplies used in the manufacture or distribution of foodstuffs*, from Chicago, IL, Minneapolis, MN, and points in WI, to Calumet, Escanaba, Marquette, Norway, and Sault Ste. Marie, MI, under continuing contract with Jilbert Dairy Inc., of Marquette, MI; and (3) *novelty ice cream products and water ices*, in vehicles equipped with mechanical refrigeration, from Ocala, FL, Sikeston, MO, and Green Bay and Richland Center, WI, to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, WI, and DC, under continuing contract with Gold Bond Ice Cream, Inc., of Green Bay, WI. (Hearing site: Escanaba, MI, or Milwaukee, WI.)

MC 146022 (Sub-2F), filed April 12, 1979. Applicant: D & D NEWSPAPER

DISTRIBUTORS, INC., 600 So. Park, P.O. Box 3, Effingham, IL 62401. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *printed matter,* from Effingham, IL, to points in CT, FL, IA, IN, KS, KY, NC, NH, and WI, under continuing contract(s) with Petty Company, Inc., of Effingham, IL. (Hearing site: St. Louis, MO, or Chicago, IL.)

MC 146293 (Sub-13F), filed April 13, 1979. Applicant: REGAL TRUCKING CO., INC., 95 Lawrenceville Industrial, Park Circle, NE., Lawrenceville, GA 30245. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *polystyrene shapes and forms,* from points in WA, CA, TX, GA, and IN, to points in the United States (except AK and HI); and (2) *materials, equipment, and supplies used in the manufacture or distribution of the commodities named in (1),* in the reverse direction. (Hearing site: Atlanta, GA.)

MC 146293 (Sub-14F), filed April 13, 1979. Applicant: REGAL TRUCKING CO., INC., 95 Lawrenceville Industrial, Park Circle, NE., Lawrenceville, GA 30245. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities as are dealt in by grocery and food business houses* (except frozen foods and commodities in bulk), from points in Adams County, PA, and Berkeley County, WV, to points in AL, FL, GA, LA, MS, NC, OK, SC, TN, and TX. (Hearing site: Atlanta, GA.)

MC 146943F, filed April 5, 1979. Applicant: SHAWNEE TRUCK LINES, INC., 3488 DeLong Rd., Lima, OH 45806. Representative: James W. Muldoon, 50 W. Broad St., Columbus, OH 43215. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Lima, OH, on the one hand, and, on the other, points in OH, restricted to the transportation of traffic having a prior or subsequent movement by rail. (Hearing site: Columbus, OH, or Washington, DC.)

MC 147123F, filed April 13, 1979. Applicant: LEROY SMITH, Route 1, North Salem, IN 46165. Representative: (same as above). To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber and wood chips,* between points in IL, IN, IA, KY, MI, MO, OH, TN, and WI, under continuing contract with Pingleton Lumber Company, Inc., of Greencastle, IN. (Hearing site: Indianapolis or Ft. Wayne, IN.)

MC 147132F, filed April 17, 1979. Applicant: SCHARDER TRUCKING, INC., box 37A1, Star Route, Lock Haven, PA 17745. Representative: Walter K. Swartzkopf, Jr., 407 N. Front St., Harrisburg, PA 17101. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber,* between points in TN, NC, VA, WV, MD, PA, NY, VT, and NJ, under continuing contract(s) with Williams and Saylor Lumber Mills, of Lock Haven, PA, Reese Lumber Co., Inc., of Williamsport, PA, and J. H. Monteath Company, of Bronx County, NY. (Hearing site: Washington, DC, or Harrisburg, PA.)

Freight Forwarder

FF 442 (Sub-1F), filed March 19, 1979. Applicant: C-LINE FORWARDING, INC., 340 Jefferson Boulevard, Warick, RI 02888. Representative: Ronald N. Cobert, Suite 501, 1730 M Street NW., Washington, DC 20036. To operate as a *freight forwarder,* in interstate commerce, in the transportation of *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Bristol, Essex, Middlesex, Norfolk, Plymouth, Suffolk, and Worcester Counties, MA, and points in RI, on the one hand, and, on the other, points in FL. (Hearing site: Boston, MA.)

Freight Forwarder

FF 502 (Sub-1F), filed March 5, 1979. Applicant: ANDREWS FORWARDERS, INC., Seventh and Park Avenue, Norfolk, NE 68701. Representative: Alan F. Wohlstetter, 1700 K Street NW., Washington, DC 20006. To operate as a *freight forwarder,* in interstate commerce, in the transportation of (a) *used household goods and unaccompanied baggage* and (b) *used automobiles,* between points in the United States, including AK and HI, restricted in (b) above to the transportation of export and import traffic. Condition: Issuance of a certificate in this proceeding is subject to the coincidental cancellation, as requested by applicant, of the outstanding permit in FF-502 issued July 20, 1978. (Hearing site: Omaha, NE.)

NOTE.—The purpose of this application is to add AK to applicant's present authority in FF-502.

[FR Doc. 79-23518 Filed 7-30-79; 8:45 am]
BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. 119]

Permanent Authority Applications, Decision-Notice

Decided: July 10, 1979.

The following applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

On cases filed on or after March 1, 1979, petitions for intervention either with or without leave are appropriate.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If applicant has introduced rates as an issue it is noted. Upon request an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplyfying grants of operating authority.

We find: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicant must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 1, Members, Carleton, Jones, and Joyce.

Agatha L. Mergenovich,
Secretary.

MC 112123 (Sub-15F), filed December 7, 1978, and previously published in the Federal Register on February 8, 1979. Applicant: BEST-WAY TRANSPORTATION, a corporation, 5150 North 16th Street, Phoenix, AZ 85016. Representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 320, Phoenix, AZ 85008. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Green Valley, AZ, and Nogales, AZ, over U.S. Hwy 89 and Interstate Hwy 19, serving all intermediate points, and the off-route points of the Twin Buttes Mine Sites, Pima Mine Site, and Esperanza Mine Site, In Pima County, AZ. (Hearing site: Los Angeles, CA, or Phoenix, AZ.)

Note.—The purpose of this republication is to show that applicant intends to tack this authority with carrier's existing authorities.

MC 146002 (Sub-2F), filed February 26, 1979, and published in the FR issue of May 8, 1979, as MC 146003 Sub 2F, and republished as corrected this issue. Applicant: BROOKRIDGE LEASING, INC., 7211 Brookpart Road, Parma, OH 44129. Representative: E. H. Van Deusen, 220 West Bridge Street, Dublin, OH 43107. The scope of this application remains as previously published. The purpose of this republication is to correctly identify the application as MC 146002 Sub 2F.

[FR Doc. 79-21519 Filed 7-30-79; 8:45 am]
BILLING CODE 7035-01-M

[No. MC-112989 (Sub-No. 60) F]

West Coast Truck Lines, Inc., Extension—Turner, or (Eugene, OR); Decision

Decided: July 2, 1979.

By prior decision of February 7, 1979, served March 20, 1979, the application in this proceeding was granted substantially as set forth in the appendix. However, a request by applicant to include Texas as a destination State (Texas was included in the original application but omitted from the original Federal Register publication) was not considered.

We have now considered this unopposed application with that request in mind and have determined that a need for service to points in Texas have been demonstrated. We will, however, require republication inasmuch as it is possible that other parties who have relied on the notice of the application as published, may have an interest in and would be prejudiced by a lack of proper notice of the authority granted. Thus, a notice of the authority actually granted, as described in the appendix, will be published in the Federal Register, and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period, any proper party in interest may file an appropriate petition for leave to intervene in the proceeding, setting forth in detail the precise manner in which it has been prejudiced.

We find:

The present and future public convenience and necessity require operation by applicant, performing the service described in the appendix. Applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. An appropriate certificate should be granted, subject to republication in the Federal Register. This decision is not a major Federal action significantly affecting the quality of the human environment.

It is ordered:

The application is granted to the extent set forth in the appendix.

The prior decision of February 7, 1979, to the extent inconsistent with the

matters discussed in this decision, is vacated.

Operations will begin only following the service of a *certificate* which will be issued if applicant complies with the following requirements set forth in the Code of Federal Regulations: insurance (49 CFR 1043), designation of process agent (49 CFR 1044), and tariffs (49 CFR 1310), and compliance with the republication condition set forth in the appendix.

Compliance with these requirements must be made within 90 days after the date of service of this decision or the grant of authority shall be void.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman. (Board Member Eaton not participating).

Agatha L. Mergenovich,

Secretary.

Appendix

Authority to conduct the following operations will be issued in an appropriate document. This decision does not constitute authority to operate. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic pipe, fittings*, and *accessories* for plastic pipe, from Turner, OR, to points in Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming. Condition: Issuance of the certificate authorized in this proceeding shall be withheld for a period of 30 days from the date of publication in the Federal Register of a notice of the authority actually granted.

[FR Doc. 79-23517 Filed 7-30-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 148
Tuesday, July 31, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, August 1, 1979.

PLACE: Room 856, 1919 M Street N.W., Washington, D.C.

STATUS: Closed Commission Meeting following the Open Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

General—1—Reprogramming of Budgeted Funds and Redistribution of Field Personnel to Enhance Service to the Public.

Hearing—1—Petition for leave to dismiss with prejudice the application filed by Tidewater Sounds, Inc. in the Suffolk, Virginia, FM broadcast proceeding (Docket Nos. 20269-20270).

Hearing—2—Petition for acceptance of an engineering amendment, contingent upon return of the application to processing, in the Edna, Texas, AM licensing proceeding, (Docket No. 20075).

Hearing—3—Petition for special relief requesting a "distress sale" of stations WDAS and WDAS-FM in the Philadelphia, Pennsylvania, renewal proceeding (BC Docket Nos. 79-30 and 79-31).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

If additional information is required concerning this meeting it may be obtained from FCC Office of Public Affairs, telephone no. (202) 632-7260.

Issued: July 26, 1979.

[S-1521-79 Filed 7-27-79; 3:24 pm]

BILLING CODE 6712-01-M

2

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, August 1, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Hearing—1—Appeal from Presiding Officer's Interlocutory Ruling in the Selma, Alabama, WSLA-TV broadcast proceeding (BC Docket No. 78-238).

General—1—Title: Application for review of a ruling by the Chief, Broadcast Bureau, denying an FOIA request by Studio Broadcasting System for inspection of annual financial reports of station KQTV, St. Joseph, Missouri. Summary: Studio Broadcasting System seeks release of Forms 324 for KQTV for 1970-78, contending that station's financial condition has been placed in issue in context of proceeding in which Amaturo Group, Inc. (owner of KQTV) seeks to operate station in Topeka, Kansas and to convert KQTV to satellite Station. Amaturo Group, Inc. contends that KQTV's financial condition has not been placed in issue and that it has merely addressed future demographic composition of St. Joseph.

General—2—Title: Application for Review of a ruling by the Chief, Common Carrier Bureau, which denied in part an FOIA request by the Puerto Rico Telephone Authority and Puerto Rico Telephone Company (PRTA). (FOIA No. 9-64). Summary: The Chief of the Common Carrier Bureau partially denied a request for agency records under the Freedom of Information Act. The Bureau concluded that some of the records requested should not be disclosed because they were exempt from the public disclosure requirements of the Act. The requestor of the information, the Puerto Rico Telephone Authority and Puerto Rico Telephone Company (PRTA), appeals the Bureau's ruling contending that the records withheld by the Bureau should be publicly disclosed.

General—3—Application for Review of a ruling by the Chief, Broadcast Bureau, which denied in part an FOIA request by the NAACP Legal Defense Fund (LDF). (FOIA Control No. 9-65). Summary: The Chief of the Broadcast Bureau partially denied a request for agency records under the Freedom of Information Act. The Bureau concluded that some of the records requested should not be disclosed because they were exempt from the public disclosure requirements of the Act. The requestor of the information, the NAACP Legal Defense Fund, appeals the Bureau's ruling contending that the records withheld by the Bureau are required to be publicly disclosed.

General—4—Title: Inquiry into High Seas Public Coast Station Operations, Services and Industry. Summary: This Notice of Inquiry solicits comments from licensees, users, other government agencies, the general public and all other interested parties on the problems of the maritime telecommunications industry with special emphasis on public coast stations' present and future services, operations and role in the industry.

General—5—Title: First Report and Order in Docket 20718 to adopt regulations for an induction cooking range. Summary: FCC considers staff recommendation to adopt regulations for induction cooking range as an intial step in finalizing the proceeding in Docket 20718. Recommendation includes a requirement for mandatory certification without recertification, for a radiated interference limit and a conducted interference limit.

General—6—Title: Petition for waiver of §§ 15.4(m) and 15.7 filed by Texas Instrument Inc. on February 26, 1979. Summary: FCC considers petition filed by TI to waive §§ 15.4 and 15.7 to permit immediate marketing of a personal computer and a stand alone modulator while a rule change to this effect is waiting final action by the Commission. Rule change is proposed in RM-3328.

General—7—Title: Notice of Proposed Rule Making to amend Part 15 of the Rules in response to petition filed by Bell & Howell (RM 3188). Summary: The Commission considers a staff recommendation for proposed new rules to be included in Part 15 which will provide for the sale and operation of a wireless inflight entertainment system. The wireless inflight entertainment system is a low power communications device operating in the 72-73 MHz radio frequency band used to provide audio entertainment throughout the passenger cabin of a commercial aircraft without the use of wires.

General—8—Title: Second Notice of Inquiry to Consider Phase II of the Fee Refund Program (Fees of $20 and Less.) Docket No. 78-316. Summary: The Commission will consider proposing preliminary refund amounts and procedures for obtaining those refunds in Phase II of its Refund Program. Phase II deals with fees of $20 and less which were paid to the Commission from 1970 through 1976. Approximately $30 million. The Commission will only be seeking comments from the public at this time on proposed refunds and procedures. Further Commission action in late 1979 will be necessary before refunds in Phase II can begin to be made.

General—9—*Fiscal Year 1981 Budget Estimates to OMB-Commission-Wide*

Priorities.—As part of our Fiscal Year 1981 Estimates to OMB, we are required to rank, in priority order, all of the decision packages which comprise the Commission's budget request. This item describes the different priority levels (minimum, fixed, current, and improved) and provides a recommended list of Commission-wide priorities.

General—10—Title: Amendment of Parts 2, 21, 87, and 90 of the Commission's Rules to Allocate Spectrum for, and to Adopt Other Rules and Policies Pertaining to, the Use of Radio in Digital Termination Systems for a new Common Carrier Digital Communication Service. Summary: On November 16, 1978, Xerox filed a petition for the re-allocation of the 130 MHz between 10.55 and 10.68 GHz, and for the adoption of other rules and policies to permit establishment of new common carrier nationwide networks providing for the high-speed, end-to-end two-way transmission of digitally encoded information. The service that Xerox proposes would provide for such information transfer as document distribution, computer data transfer, and teleconferencing. The merits of the petition and the other issues raised by it are considered.

Private Radio—1—Title: Orders dismissing rulemaking petitions, RM-2015 and RM-2215, proposing to amend Amateur Radio Service Rule Section 97.101 on emergency communications procedures, and Radio Control (RC) Service Rules, Part 95, to assign an exclusive frequency for an in-vehicle warning system. Summary: Rule Section 97.101 already provides for the emergency procedures proposed by the petitioner. Therefore, the issue before the Commission in whether to dismiss these rulemaking petitions.

Private Radio—2—Title: Notice of Proposed Rule Making to provide 50 channels in the 800 MHz band for slow growth public safety and utilities radio systems. (RM-3380). Summary: the FCC is proposing to amend Part 90 of its Rules to provide 50 radio channels in the 800 MHz private land mobile radio spectrum specifically for certain qualified applicants in the Police, Fire, Local Government, Telephone Maintenance, and Power Radio Services. These applicants are those with large, long-term planning, multi-year implemented radio systems. The NPRM proposes eligibility requirements for such applicants, outlines the frequency assignment plan for the 50 channels, and proposes certain system implementation reporting requirements.

Private Radio—3—Title: Rule Making petitions 3315, 3325, and 3330 concerning medical paging operations in the Special Emergency Radio Service. Summary: This action proposes to reallocate four 450 MHz band radio box frequencies, which are very lightly utilized, from the Local Government Radio Service to the Special Emergency Radio Service where there is urgent need for additional frequencies for medical paging operations. The action would also extend the January 1, 1980, deadline for conversion of paging operations in Special Emergency Radio systems to paging-only frequencies.

Common Carrier—1—Title: Request for Stay of rules and policies set forth in the Memorandum Opinion and Second Report and Order relating to the adoption of rules for the regulation of cable television pole attachments (CC Docket No. 78-144). Summary: The Commission recently amended procedural rules and established substantive guidelines relative to the determination of just and reasonable pole attachment rates, such as additional costs, operating expenses and actual capital costs of the utility, usable space, and guidelines for terms and conditions. GTE filed a request for stay of these rules and policies pending Commission action on petitions for reconsideration filed by it and other parties. The Commission considers whether GTE is likely to prevail on the merits and whether it will suffer irreparable injury if the stay is not granted.

Common Carrier—2— Title: Revision of the Uniform System of Accounts (USOA) for Telephone Carriers, CC Docket 78-196: First Supplemental Notice of Proposed Rulemaking. The Supplemental Notice of Proposed Rule Making gives the interested parties opportunity to comment on matters which they did not address in response to the Original Notice concerning the Revision of the Uniform System of Accounts for Telephone Carriers, CC Docket 78-196. It also provides opportunity for extension and clarification of prior comments and lists particular items for comment, including the Functional Accounting System (FAS) advocated by the Bell System.

Common Carrier—3—Title: Order concerning the construction and operation of a seventh transatlantic submarine cable system (TAT-7) between the United States and the United Kingdom. Summary: The FCC is considering the application to construct and operate the TAT-7 Cable, filed by the American Telephone & Telegraph Company, FTC Communications, Inc., ITT World Communications Inc., RCA Global Communications, Inc., TRT Telecommunications Corp. and Western Union International on May 17, 1979 and amended June 5, 1979. The application was filed pursuant to the Commission's determination in Docket No. 18875 that the introduction of a TAT-7 Cable in 1983 would be in the public interest if it facilitated the implementation of a comprehensive cable/satellite facility use plan for the North Atlantic region.

Common Carrier—4—Title: Application of Graphnet Systems, Inc., to Participate in the Hinterland Delivery of International Public Message Services (PMS). Summary: In *Domestic Public Message Services,* 71 FCC 2d 471 (Released March 28, 1979), the Commission authorized Graphnet to participate in the hinterland delivery of international communications messages. RCA Alascom seeks clarification of and TRT Telecommunications seeks reconsideration of the Commission order. The issues before the Commission are:

(1) Whether the March 28, 1979 order encompasses the services provided by RCA Alascom.

(2) Whether the International Formula, which presently applies to merged domestic telegraph carriers (Western Union), for dividing unrouted outbound PMS traffic between the International Record Carriers should be imposed on Graphnet.

(3) Whether certain contract clauses between Graphnet and RCA Globcom, Western Union International, and ITT Worldcom each constitute a reciprocal trading arrangement contrary to the public interest.

Common Carrier—5—Title: Memorandum Opinion and Order concerning Policy to be Followed in Future Licensing of Facilities for Overseas Communications. (Docket No. 18875) Subject: The FCC is further considering the comprehensive facilities plan negotiated among the U.S. carriers and the European and Canadian telecommunication entities for the construction and use of North Atlantic facilities through year-end 1985.

Common Carrier—6—Title: United Video, Inc., revision to Tariff F.C.C. No. 6, service to cable television customers in Oklahoma, Transmittal No. 164. Summary: United Video, Inc., distributes via terrestial microwave facilities television and FM signals to cable television systems in Oklahoma. It proposes a 3 percent surcharge to its existing rates. Petitions for suspension have been filed by two customers of United Video, Inc., Cablevision of Oklahoma, Inc. and Okmulgee Video, Inc. Among the issues to be considered are whether serious inconsistencies in cost support data exist between United Video's present transmittal and earlier filings, whether its rate increase has been adequately justified, and whether its surcharge should be suspended because its existing tariff contains population sensitive rates. The Commission proposes to allow United Video's surcharge to become effective.

Common Carrier—7—Title: Request for Declaratory Ruling and Investigation by GRAPHNET SYSTEMS, INCORPORATED concerning a Proposed Offering of Electronic Computer Originated Mail (ECOM). Summary: The Commission is asked to address the policy and legal issues relevant to the Commission's jurisdiction with respect to the United States Postal Service's Proposed Offering of ECOM.

Cable Television—1—Title: Docket 19128: Rulemaking proceeding in which the Commission proposed to require cable television systems to maintain logs of program originations. Summary: In 1969 the Commission adopted rules requiring cable television systems with 3,500 or more subscibers to originate programming. It was proposed that cable system operators be required to make a log of all cablecast programming distributed as a means of assisting the Commission to fulfill its regulatory responsibilities in this area. Due to changing regulatory requirements the proposal was not adopted and remains pending at this time. The issue now to be

decided is what action the Commission should take in terms of requiring the retention of logs of cablecast programs.

Cable Television—2—Title: RM-3115: Petition for rulemaking by Television Muscle Shoals, Inc. Summary: Petition filed by the licensee of station WOWL-TV in Florence, Alabama asked that Florence be added to the Huntsville-Decatur television market for purposes of the cable television rules. This change would expand in one direction the area in which the station is permitted and even required to be carried on cable television systems which the station feels would equalize competition among broadcasters in the market, be of benefit to cable subscribers and of benefit to station WOWL-TV. In addition, the change is said to be consistent with the manner in which audience rating services define the market.

Cable Television—3—Title: Docket 20553: A rulemaking proceeding relating to the carriage of "specialty" stations by cable television systems. Summary: This proceeding relates to the carriage of "speciality" stations by cable television systems. In an earlier decision the Commission exempted from the cable television signal carriage limits, stations carrying significant amounts of foreign language, religious or automated programming. The proceeding was left open for the purpose of possible inclusion within the "specialty" definition of stations carrying ethnic programming or subscription television programming. The Commission has since, in Dockets 20988 and 21284, proposed to delete all of the signal carriage limits raising the question as to what, if any, further action needs to be taken in this "specialty" station proceeding.

Cable Television—4—Title: RM-2822: Petition for rulemaking filed by the Citizens for Cable Awareness in Pennsylvania and the Legislative Committee of the Philadelphia Community Cable Coalition. Summary: Petition requests that the Commission release information on the number of cable television systems in operation and the type and number of complaints received relating to cable television operations in a manner similar to that now done for the broadcasting industry.

Cable Television—5—Title: Memorandum Opinion and Order in CT Docket 78-206, regarding three requests to reconsider a previous decision. Summary: In 1978 the Commission decided that the system of prior review and certification of cable television systems should be eliminated and replaced by a process of registration. (Section 76.12 of Rules). The Commission has received three requests to reconsider that decision. They urge (a) that we reinstate the certificate of compliance process, (b) that copies of registration statements be sent to affected television stations, and/or (c) that registration statements list all the signals currently being carried.

Cable Television—6—In *Arlington Telecommunications Corp.* (Arlington County, Va.), FCC 78-761, 69 FCC 2d 1923 (1978) [*ARTEC II*], the FCC changed the standard by which cable TV operators must prove they are entitled to waivers of the Commission's signal carriage limitations. The National Association of Broadcasters and four other parties have jointly requested that the FCC postpone the implementation of the new standard adopted in *ARTEC II* until the U.S. Court of Appeals decides several cases appealing the FCC's decision. The FCC must also determines whether to grant a waiver of the Rules of the Arlington County cable system to permit it to carry the signals of three Baltimore network-affiliated stations.

Cable Television—7—*"Response to Commission Request for Information", filed by Station KIRO-TV (CBS, Channel 7), Seattle, Washington, concerning various cable systems in Seattle, Washington.*— The issue raised herein is: Should KIRO receive network program nonduplication on cable systems in its area against imported Canadian signals which prerelease some American network programming? In the two most recent opinions, the Commission, reacting to an earlier order issued by the United States Court of Appeals, held that the problem of Canadian prerelease presented as serious a threat to the local, American broadcaster as simultaneous duplication. However, additional information was sought from the parties concerning economic impact. This item deals with the new submissions.

Assignment and Transfer—1—Title: Request of William H. Rudolph for tax certificate in connection with sale of the Macomb Daily Journal, Macomb, Illinois. Summary: William H. Rudolph, the sole stockholder of the licensee of Stations WKAI-AM-FM, Macomb, Illinois, was prior to January 3, 1979, the President and majority stockholder of the Macomb Daily Journal, Incorporated, publisher of the only daily newspaper in Macomb. The Commission has been requested to issue a tax certificate, pursuant to Section 1071 of the Internal Revenue Code, for the sale of a daily newspaper.

Assignment and Transfer—2—Title: (1) Applications for consent to the assignment of license and/or the transfer of control to Viacom Broadcasting, Inc. (VBI) of certain stations licensed to Sonderling Broadcasting Co. (SBC). (2) Applications for the assignment of license and the transfer of control of stations WOPA and WBMX (FM), Oak Park, Illinois, from SBC to Sonderling Radio Corporation. (3) Applications (BAL-790608G1) for the voluntary assignment of license of station WOL, Washington, D.C., from SBC to WOL, Inc. Summary: SBC has proposed to merge into Viacom International, Inc. with Viacom acquiring all of SBC's broadcast facilities except WOPA and WBMX (FM), Oak Park, Illinois, and WOL, Washington, D.C.

Assignment and Transfer—3—Title: Request for an exception to the Top Fifty Market Policy in connection with an application for the transfer of control of the licensee of WDCA-TV, Washington, D.C., to Taft Broadcasting Company; Petition to deny filed by Washington Association for Television and Children (WATCH). Summary: Taft presently controls the licenses of one UHF and five VHF television stations in the nation's top fifty markets. It is requesting an exception to the Top Fifty Market Policy to enable it to acquire its seventh television station and its second independent UHF station.

Assignment and Transfer—4—Title: (a) Request for issuance of a tax certificate in connection with the sale of Station KJLH (FM), Compton, California, from John Lamar Hill to Taxi Productions, Inc. (b) Request for issuance of a tax certificate in connection with the sale of Station KFOX (FM), Redondo Beach, California, from Jack Barry to KFOX Radio, Inc. Summary: Station KJLH (FM), and KFOX (FM), have been sold to corporations which are owned and controlled by minorities. Each seller has requested that the Commission issue a tax certificate for the sale of its station in accordance with the Commission's *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979 (1978) which sets forth the Commission's policy of fostering minority ownership.

Renewal—1—Title: Memorandum Opinion and Order Further Considering the Commission's Grant of the 1974 License Renewal Application of Station KCCW, San Antonio, Texas (File No. BR-1776). Summary: On November 2, 1976, the United States Court of Appeals for the District of Columbia Circuit remanded the Commission's Memorandum Opinion and Order, 56 FCC 2d 333 (1975), granting the above-referenced broadcast renewal application and denying the petition to deny filed by the Bilingual Bicultural Coalition on Mass Media, Inc. The Court, without reaching the merits of the case, mandated further consideration of our Order in light of its decision in *Bilingual Bicultural Coalition on Mass Media, Inc.* v. *F.C.C.*, No. 75-1855, D.C. Cir., May 4, 1978 (*en banc*) (*"Bilingual III"*). The primary issue in this proceeding is whether further Commission action now is warranted.

Renewal—2—Title: Newhouse Broadcasting Corp. and KSD/KSD-TV, Inc. for renewal of licenses for stations KTVI (TV), KSD (AM) and KSD-TV, all located in St. Louis, Missouri. Summary: St. Louis Broadcasting Coalition's petitions for reconsideration of Commission Order in: *Newhouse Broadcasting Corp.*, 61 FCC 2d 528 (1976); *KSD/KSD-TV, Inc.* 61 FCC 2d 504 (1976); and *Newhouse Broadcasting Corp., et al*, 62 FCC 2d 280 (1976). The proposed Order considers allegations regarding: cross-ownership of print and broadcast media; specific abuses of that cross-ownership; and various procedural matters.

Renewal—3—Title: McClatchy Newspapers, for renewal of license for Station KOVR(TV), Stockton, California. Summary: The proposed Order considers San Joaquin Communications Corporation petition to deny (i) licensee's employment practices are discriminatory, (ii) licensee has an undue concentration on media control in

Sacramento and Stockton, California, (iii) licensee failed to exercise good faith in giving all substantive reasons in filing an application to assign KOVR; and (iv) licensee has engaged in *ex parte* communication with four commissioners.

Renewal—4—Title: Service Broadcasting Corp. applications for renewal of licenses for Stations KKDA, Grand Prairie, Texas and KKDA-FM, Dallas, Texas. Summary: The proposed Order considers allegations that the licensee; failed to ascertain and program for the needs of the black community; distorted news; presented objectionable programming; aired unethical contests; improperly promoted local concerts and records; presented entertainment logged as news and public affairs; and discriminated in employment.

Renewal—5—Title: In re Applications of KCOP Television, Inc. for Renewal of License of Station KCOP-TV, Los Angeles, California (BRCT-102) and Metromedia, Inc. for Renewal of License of Station KTTV-TV, Los Angeles, California (File No. BRCT-64). Summary: The D.C. Court of Appeals remanded the records in these two cases to the Commission for further consideration in light of its *en banc* decision in *Bilingual Bicultural Coalition on Mass Media* v. *F.C.C.*, No. 75-1855, May 4, 1978: Petitioners allegations of employment discrimination against women are reconsidered with particular emphasis on statistical analysis and the "zone of resonableness."

Renewal—6—Title: In re application of CHANNEL 20, INCORPORATED, For Renewal of License of Station WDCA-TV, Washington, D.C., File No. BRCT-624. Summary: The Washington Association for Children and Television (WATCH) filed a petition to deny the license renewal application of Channel 20, Inc., for station WDCA-TV, Washington, D.C., on the grounds that Channel 20 has failed to broadcast sufficient amounts of educational children's programming and age specific children's programming as required by the guidelines for children's television established in *Action for Children's Television, (Children's Report)*, 50 FCC 2d 1 (1974), *petition for reconsideration denied*, 55 FCC 2d 691 (1975), *aff'd sub nom. Action for Children's Television* v. *F.C.C.* WATCH also asserted that Channel 20 has failed to conduct an adequate ascertainment of the problems, needs and interests of the children in its service area. In Memorandum Opinion and Order FCC 79-83, released February 16, 1979, the Commission granted Channel 20's license renewal application and denied WATCH'S petition to deny. Now before the Commission is WATCH's petition for reconsideration of that Order, Channel 20's opposition to that petition, and related pleadings. WATCH again raises the same issues involving the adequacy of Channel 20's educational and age-specific children's programming, as well as the station's ascertainment of the problems of children.

Aural—1—Title: Modification of License to Change Main Studio Location. Summary: Jackson County Broadcasting, Inc., licensee of AM Station WKOV, Wellston, Ohio, is seeking authority to relocate its main studio to Jackson, Ohio. Because WKOV proposes to relocate its main studio outside its community of license, at a site other than its transmitter site, the WKOV application is grantable only upon the waiver of the Commission's Main Studio Rule. The issue to be considered is whether WKOV has shown special circumstances to justify waiver of the Main Studio Rule.

Aural—2—Title: Two competing applications for construction permits for new FM stations at Sparks, Nevada, filed by Edward H. "Pepper" Schultz and Beck Enterprises, Inc., and petitions to deny. Summary: Memorandum Opinion and Order considers whether applications should be designated for hearing in a consolidated proceeding.

Television—1—Title: Requests for waivers of Section 73.653(b) of Rules to allow separate operation of TV aural and visual transmitters, filed by The Outlet Company (WDBO-TV, Orlando, FL; WJAR-TV, Providence, RI; WCMH-TV, Columbus, OH). Summary: Licensee requests 3 waivers of rule to allow separate operation of the aural and visual transmitters for its 3 TV stations. The issue before the Commission is whether to grant the waivers.

Television—2—Title: Applications of KOTV, Inc. (KOTV-TV) and Scripps-Howard Broadcasting (KTEW-TV), both Tulsa, Oklahoma, to change transmitter sites and to make equipment changes. Summary: KOTV and KTEW, both Tulsa, Oklahoma, request CPs to move their transmitters to the same site. Applications are opposed by UHF stations in Joplin, MO; Fort Smith, AR; and Fayetteville, AR. Questions raised as to UHF impact, loss areas, unserved areas, and other questions.

Broadcast—1—Title: Response to GAO Report on FCC regulatory policies affecting commercial radio and television. Memorandum and letter of transmittal from the Commission to the Committees on Government Operations of the House and Senate, Appropriations Committees of the House and Senate, to GAO and to OMB, responding to GAO report on FCC regulatory policies affecting commercial radio and television.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: July 26, 1979.

[S-1522-79 Filed 7-27-79; 3:24 p.m.]

BILLING CODE 6712-01-M

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FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: August 1, 1979, 10 a.m.

PLACE: 825 North Capitol Street NE., Washington, D.C. 20426, Room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Office of Public Information.

Power Agenda—332nd Meeting, August 1, 1979, Regular Meeting (10 a.m.)

CAP-1. Project No. 2729, Power Authority of the State of New York.
CAP-2. Project No. 2777, Idaho Power Co.
CAP-3. Project No. 2778, Idaho Power Co.
CAP-4. Docket No. ER79-438, Public Service Co. of Indiana
CAP-5. Docket No. E-7734, Mid-Continent Area Power Pool Agreement
CAP-6. Docket No. ER78-517, Connecticut Light and Power Co.
CAP-7. Docket No. ER79-166, Kansas City Power and Light Co.

Miscellaneous Agenda—332nd Meeting, August 1, 1979, Regular Meeting

CAM-1. 404 Referral—Proposed amendments to include additional petroleum substitutes in the entitlements program.
CAM-2. Kansas Power and Light Co.
CAM-3. Potomac Edison Co.
CAM-4. Monongahela Power Co.
CAM-5. Delmarva Power and Light Co. of Maryland.
CAM-6. Docket No. RM79-, Final Part 284 regulations under the Natural Gas Policy Act of 1978.

Gas Agenda—332nd Meeting, August 1, 1979, Regular Meeting

CAG-1. Docket No. RP-79-22, Consolidated Gas Supply Corp.
CAG-2. Docket No. RP79-7, Southern Natural Gas Co.
CAG-3. Docket No. RP79-11, Texas Gas Pipe Line Corp.
CAG-4. Docket No. RI79-28, Kaiser-Francis Special Account C.
CAG-5. Docket No. RI79-36, Triton Oil and Gas Corp.
CAG-6. Docket No. CI72-145, Gulf Oil Corp.
CAG-7. Docket No. CI79-414, Mesa Petroleum Co., Docket No. CI78-902, MRT Exploration Co., Docket No. CS78-111, Petroleum, Inc., Docket No. CI72-276, The Superior Oil Co., Docket No. CI72-352, Ashland Exploration, Inc., Docket No. CI72-462, Trans-Ocean Oil, Inc., Docket No. CI72-542, Hassie Hunt, Inc., Docket No. CI72-543, Hunt Petroleum Corp.
CAG-8. Docket Nos. CI74-392, et al., Exxon Corp., et al.

CAG–9. Docket Nos. CI72–440, et al., Amoco Production Co., et al.
CAG–10. Docket Nos. CI70–727, et al., Ocean Production Co. (Operator), et al.
CAG–11. Docket Nos. CS71–281 and CS76–44, Elf Aquitaine, Inc., et al.
CAG–12. Docket Nos. G–5010, et al., Shell Oil Co., et al.
CAG–13. Transcontinental Gas Pipe Line Corp.
CAG–14. Docket No. CP79–114, Cities Service Gas Co. and El Paso Natural Gas Co., Docket No. CP79–115, Northwest Pipeline Corp. and Mountain Fuel Supply Co.
CAG–15. Docket No. CP79–118, United Gas Pipe Line Co., Docket No. CP79–196, Trunkline Gas Co.
CAG–16. Docket No. CP79–281, Transcontinental Gas Pipe Line Corp.
CAG–17. Docket No. CP79–207, Equitable Gas Co.
CAG–18. Docket No. CP79–303, Panhandle Eastern Pipe Line Co.
CAG–19. Docket No. G–10395, Texas Gas Transmission Corp.
CAG–20. Docket No. CP76–321, Texas Gas Transmission Corp. and Tennessee Gas Pipeline Co., a division of Tenneco Inc.

Power Agenda—332nd Meeting, August 1, 1979, Regular Meeting

I. Licensed Project Matters

P–1. E–9530. *Pyramid Lake Paiute Tribe of Indians,* complainant v. *Sierra Pacific Power Company,* respondent, Truckee-Carson Irrigation District and Washoe County Water Conservation District, additional respondents.
P–2. Project No. 516 and E–7791, South Carolina Electric and Gas Co.

II. Electric Rate Matters

ER–1. Docket No. ER79–339, Arkansas Power & Light Co.
ER–2. Docket No. ER79–435, Union Electric Co.
ER–4. Docket No. ER79–429, Black Hills Power & Light Co.
ER–5. Docket No. E–9578 (Phase I), Texas Power & Light Co.
ER–6. Docket No. E–9565, town of Massena, New York v. Niagara Mohawk Power Corporation and Power Authority of the State of New York.
ER–7. Docket Nos. ER79–216 and ER79–217, Boston Edison Co.
ER–8. Docket No. ER77–69, Central Illinois Public Service Co.

Miscellaneous Agenda—332nd Meeting, August 1, 1979, Regular Meeting

M–1. Docket No. RM79–6, Procedures governing the collection and reporting of information associated with the cost of providing electric service.
M–2. Docket No. RM79–, Flood plain management and protection of wetlands.
M–3. Docket No. RM79–, Regulations implementing National Environmental Policy Act.
M–4. Reserved.
M–5. Reserved.
M–6. Docket No. RM79–, Final rule amending regulations on new natural gas and certain natural gas produced from the outer continental shelf.
M–7. Docket No. RM79–, Final regulations under sections 105 and 106(b) of the NGPA.
M–8. Docket No. RM79–, Regulations relative to section 109 of the NGPA.
M–9. Docket No. RM79–, Fees applicable to natural gas pipeline construction.
M–10. Docket No. RM78–22, Amendment and clarification of the Commission's interim regulations implementing the Natural Gas Policy Act of 1978 and regulations under the Natural Gas Act.
M–11. Docket No. RM79–, Regulation implementing section 502c of the Natural Gas Policy Act for interpretation.
M–12. Docket No. RM79–34, Transportation certificates for natural gas for the displacement of fuel oil.
M–13. Notices of determinations.
M–14. Notices of determinations.
M–15. Notice of determinations.
M–16. Docket No. GP79–4, Kansas Power & Light Co., MESA Petroleum Corp.

Gas Agenda—332nd Meeting, August 1, 1979, Regular Meeting

I. Pipeline Rate Matters

RP–1. Docket Nos. RP76–136 and RP77–26, Transcontinental Gas Pipe Line Corp.
RP–2. Docket No. RP71–107 (Phase II), Northern Natural Gas Co.
RP–3. Docket Nos. RP72–122 (PGA 78–3), RP78–51 and RP79–1, Colorado Interstate Gas Co.
RP–4. Docket No. OR79–1, Williams Pipe Line Co.

II. Producer Matters

CI–1. Docket No. CI77–298, Tenneco, Inc. and Amoco Production Co., et al.
CI–2. Docket No. CI77–701, City of Perryton, Docket No. CI77–799, Falcon Petroleum.

III. Pipeline Certificate Matters

CP–1. Docket No. CP76–399, Southwest Gas Corporation v. Northwest Pipeline Corporation.
CP–2. Docket Nos. CP78–123, et al., Alaskan Northern Transportation Co.—pipeline design and capacity.
CP–3. Docket No. TC79–79, Cities Service Gas Co.

Kenneth F. Plumb,
Secretary.

[S–1515–79 Filed 7–27–79; 9:51 am]
BILLING CODE 6450–01–M

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FEDERAL RESERVE SYSTEM: Board of Governors

TIME AND DATE: 11 a.m., Friday, August 3, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 462–3204.

Dated: July 26, 1979.

Griffith L. Garwood,
Deputy Secretary of the Board.

[S–1519–79 Filed 7–27–79; 3:24 pm]
BILLING CODE 6210–01–M

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[USITC SE–79–30A]

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Filed with FR July 20, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, July 31, 1979.

CHANGES IN THE MEETING: In deliberations held Thursday, July 26, 1979, the United States International Trade Commission, in conformity with 19 CFR 201.37, voted that Commission business requires that the meeting previously scheduled to be held on Tuesday, July 31, 1979, be cancelled.

Commissioners Parker, Moore, and Stern determined by unanimous consent that Commission business requires the cancellation of the meeting for Tuesday, July 31, 1979, and affirmed that no earlier announcement of the change was possible, and directed the issuance of this notice at the earliest practicable time. Commissioners Alberger and Bedell were not present for the vote.

CONTACT PERSON FOR MORE IMFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

[S–1516–79 Filed 7–27–79; 9:51 am]
BILLING CODE 7020–02–M

6

[USITC SE–79–31]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, August 9, 1979.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 1. Investigation 332–87 (Conditions of Competition in the Western U.S. Steel Market)—Consideration of the report.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

[S–1517–79 Filed 7–27–79; 9:51 am]
BILLING CODE 7020–02–M

7

MERIT SYSTEMS PROTECTION BOARD.

TIME AND DATE OF MEETING: 9:30 a.m. Wednesday, Thursday, and Friday, August 8–10, 1979.

PLACE: Room 404, 717 Madison Place, N.W., Washington, D.C.

SUBJECT: Hearing in case of: *In re Frazier, et al.*

CONTACT PERSON FOR MORE INFORMATION: Charles J. Stanislav, Jr., Acting Director, Office of the Secretary (202–653–7130)

Merit Systems Protection Board.

Ruth T. Prokop,

Chair.

[S–1518–79 Filed 7–27–79; 10:03 am]

BILLING CODE 6325–20–M

8

NATIONAL SCIENCE BOARD.

DATE AND TIME: August 16, 1979, 1:00 p.m., Open Session. August 17, 1979, 9:00 a.m., Closed Session.

PLACE: National Science Foundation, Rm 540, 1800 G. Street, N.W., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSION:

1. Program Review—Chemical and Process Engineering.
2. Minutes—Open Session—207th Meeting.
3. Chairman's Report.
4. Director's Report:
   a. Report on Grant and Contract Activity—6/20–8/15, 1979.
   b. Organizational and Staff Changes.
   c. Congressional and Legislative Matters.
   d. NSF Budget for Fiscal Year 1980.
5. Board Committees—Reports on Meetings:
   a. Executive Committee.
   b. Planning and Policy Committee.
   c. Programs Committee.
   d. Committee on Budget.
   e. Committee on Minorities and Women in Science.
   f. Committee on Role of NSF in Basic Research.
   g. Ad Hoc Committee on Big and Little Science.
   h. Ad Hoc Committee on Deep Sea and Margin Drilling Programs.
   i. Ad Hoc Committee on NSB Nominees.
   j. Ad Hoc Committee on NSF Act review.
6. NSF Advisory Groups.
7. Board Representation at Future Site Visits of Materials Research Laboratories.
8. Grants, Contracts, and Programs.
9. Review of NSF Act of 1950, as Amended.
10. Discussion of Reports and Future Action on June Discussion Group Reports and Recommendations.
11. Other Business.
12. Next Meetings: National Science Board, 209th Meeting, September 20–21, 1979.

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION:

A. Minutes—Closed Session—207th Meeting.
B. Nominations: NSB, NSF Assistant Directors, and Alan T. Waterman Award Committee.
C. NSB Annual Reports.
D. NSF Budgets for Fiscal Year 1981 and Subsequent Years.
E. Grants, Contracts, and Programs.

CONTACT PERSON FOR MORE INFORMATION: Miss Vernice Anderson, Executive Secretary, (202) 632–5840.

[S–1520–79 Filed 7–27–79; 3:24 pm]

BILLING CODE 7555–01–M

9

NUCLEAR REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 43401.

TIME AND DATE: July 27 and 30, 1979 (Changes).

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open (Changes).

MATTERS TO BE CONSIDERED:

Friday, July 27; 9:30 a.m.

1. Affirmation Session (approximate 10 minutes, public meeting):
   a. Order in S–3 (tentative).
   b. ALAB–542 (Atlantic Research) (tentative).
   c. Anderson FOIA Appeal (as scheduled).
   d. Upgrade Rule (postponed).
   e. Revision of 10 CFR 2.802, PRM (as scheduled).
   f. Order in Restart of TMI–1 (postponed).
2. Discussion of Technical Issues in Restart of TMI–1 (approximately 2 hours, public meeting, continued from 7/25).

Monday, July 30; 2:00 p.m.

Budget Presentation (approximately 3 hours, public meeting)—NMSS (postponed from 7/27).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Roger M. Tweed,

Office of the Secretary.

July 26, 1979.

[S–1523–79 Filed 7–27–79; 3:24 p.m.]

BILING CODE 7590–01–M

10

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: July 31; August 1, 2, and 3, 1979.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Tuesday, July 31; 9:30 a.m.

1. Budget Presentation (approx 3 hours, public meeting)—NRR (postponed from 7/30).

Tuesday, July 31, 2:00 p.m.

1. Budget Presentations (approx 3 hours, public meeting)—Research.

Wednesday, August 1; 9:30 a.m.

1. Budget Presentations (approx 3 hours, public meeting)—ADM, EDO office, COM offices.

Wednesday, August 1; 2:00 p.m.

1. Budget Markup Session (approx 3 hours, closed—exemption 9).

Thursday, August 2; 9:30 a.m.

1. Briefing on Results of IE Investigation of TMI Incident (approx 1½ hours, public meeting).
2. Budget Markup Session (approx 1½ hours, closed—exemption 9).

Friday, August 3; 9:30 a.m.

1. Budget Markup Session (approx 3 hours, closed—exemption 9).

Friday, August 3; 2:00 p.m.

1. Budget Markup Session (approx 3 hours, closed—exemption 9).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Walter Magee,

Office of the Secretary.

July 24, 1979.

[S–1524–79 Filed 7–27–79; 3:24 pm]

BILLING CODE 7590–01–M

Federal Register

Tuesday
July 31, 1979

Part II

Department of Health, Education, and Welfare

Office of Human Development Services

Grants for State and Community Programs on Aging

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services

[45 CFR Parts 1320, 1321, 1324, 1326]

Grants for State and Community Programs on Aging

AGENCY: Office of Human Development Services, (OHDS), HEW.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Administration on Aging (AoA) in the Office of Human Development Services, proposes new and revised regulations. The basis for these are the Comprehensive Older Americans Act Amendments of 1978 (Act). The amendments consolidate under one title, Title III, the older Americans programs for three activities: social services, nutrition services, and multipurpose senior centers. These were authorized before under three separate titles (III, V, and VII.) In these proposed rules, AoA is also revising and clarifying the current policies and regulations that will have continued applicability. Proposed rules are also included for new programs such as the long-term care ombudsman program authorized by the 1978 amendments.

DATES: Consideration will be given to comments received by October 1, 1979.

ADDRESSES: Address comments in writing to Commissioner on Aging, Administration on Aging, HEW North Building, 330 Independence Avenue, SW., Washington, D.C. 20201. Agencies and organizations are requested to submit comments in duplicate. Beginning two weeks from today, the public may review the comments submitted in response to this notice in room 4748, HEW North Building, 330 Independence Avenue, SW., Washington, D.C. 20201 between the hours of 9 a.m. and 4 p.m. Monday through Friday except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Luhmann, (202) 245-6809.

SUPPLEMENTARY INFORMATION:

Background

1. *History of Program.* The Older Americans Act was first enacted in 1965. On October 18, 1978 the President signed the Comprehensive Older Americans Act Amendments of 1978, Pub. L. 95-478. The Amendments were effective on October 1, 1978. The Act was amended seven times, in the period between 1965 and 1978.

As first enacted, the Act authorized funding under Title III to support in each State a State agency on aging. Title III also provided funds for each State agency to initiate local community projects to provide social services to older persons. Activities under the Act began on a modest scale. In fiscal year 1966, the total appropriation under the Act was $7.5 million.

In 1972, a new Title VII was enacted which authorized funds for local community projects to provide nutrition services to the elderly. The projects were designed to provide older persons aged 60 and older with at least one hot nutritious meal five or more days a week. Emphasis in the projects was placed on serving older persons with the greatest economic need, and on reducing the isolation of old age.

A second major change occurred in 1973. The amendments revised the Title III State grant program in order to provide for a better organization at State and local levels and to authorize the targeting of limited resources to priority services.

The State agency was directed to divide the entire State into planning and service areas, determine for which areas an area plan would be developed, and designate an area agency on aging to develop and administer the plan in each area. The 1973 amendments also added a new Title V to the Act which authorized the Commissioner to make grants directly to local community agencies to pay part of the cost of the acquisition, renovation, alteration or initial staffing of facilities for use as multipurpose senior centers.

The 1975 amendments specified four priority services to be provided under State plans: transportation, home services, legal services, and residential repair and renovations.

2. *1978 Amendments.* The 1978 amendments represent another evolutionary step in the process of establishing in each planning and service area a basic capacity to respond to the needs of older persons. They consolidated under an amended Title III the social services, nutrition, and multipurpose senior center programs authorized before under Titles III, VII, and V.

The House committee report on the subject of consolidation states that:

> The committee believes that by combining the [Title III, V, and VII] service programs under one title rather than retaining them under separate titles and administrative structures as provided for in current law it will eliminate duplicative and overlapping functions such as outreach, advocacy, needs assessment tasks, planning, staff training, and various administrative tasks. It is also the committee's hope that consolidation will increase the visibility, political strength, and significance of area agencies on aging in the community, as well as provide for more effective coordination of community resources for the elderly.[1]

The Senate committee report on the 1978 amendments provides additional insight into the Congressional intent on consolidation. The report states that:

> Throughout its work on this bill, the committee has taken the view that major revision of the Older Americans Act was necessary at this time. No major revisions have been made in the programs under the Act since 1973. At that time, an entire new network of area agencies was installed. New responsibilities and different roles were also established for the State agencies on aging and the Administration on Aging. The major goals of that legislation have now been achieved. We have accomplished the initial phase of agenda setting and administrative development necessary to move forward on the second phase of problem solving.[2]

In another comment on the subject of consolidation, the Senate report indicated that in many instances throughout the country nutrition sites and multipurpose senior centers have served effectively as focal points within the community for the delivery of a full range of social services. The report noted that the 1978 amendments contain renewed emphasis on this concept of a single focal point for service delivery within each community and expect that each area agency, in carrying out its plan, will assure that nutrition services and social services are fully integrated.[3]

3. *Transition period.* In addition to consolidating programs under a new Title III, the 1978 amendments changed in a number of other ways the direction of programs and activities under the Act. In recognition of the major changes which are required at each operational level, the amendments provide a transition period of up to two years if necessary for State and area agencies to be in full compliance with the new requirements of the Act. Under section 307(d)(2) of the Act, the Commissioner for Fiscal Years 1979 and 1980 may grant a State agency a waiver of any new requirement that he determines the State agency cannot meet because of consolidation or because meeting the requirement would reduce or jeopardize the quality of services under the Act. The Commissioner may grant a waiver only if the State agency shows that it is taking steps to meet the requirement.

[1] 95th Cong., 2d. Sess. House. Rept. No. 95-1100, p. 8.

[2] 95th Cong., 2d. Sess. Senate. Rept. No. 95-855, p. 4.

[3] Senate. Rept., *supra*, p. 8.

The State agency has similar authority to grant waivers to area agencies.

The Commissioner has received and granted a number of waiver requests for FY 1979. States may submit additional waiver requests for FY 1980.

4. *Title VI.* The 1978 amendments also enacted a new Title VI: Grants for Indian Tribes, which authorizes a new program of direct grants from the Commissioner to Indian tribal organizations. Funds have not yet been appropriated for Title VI. The new Title VI replaces a previous provision of the Act. Section 303(b)(3) introduced in 1975, required States to assure that older Indians received equitable service under Title III, and authorized the Commissioner to reallot funds directly to Indian tribes that he determined were not being equitably served. While proposed regulations for the Title III and Title VI programs are being issued separately, (the proposed Title VI regulations will be issued shortly as Part 1328) the two programs are closely related.

An eligible Indian tribal organization may apply for direct Federal funding under Title VI but it is not required to do so. It may continue to seek funding under Title III. Title III provides that Indian tribal organizations may be designated as area agencies and provides that Indian reservations may be designated as planning and service areas. Title III even includes a right of appeal to the Commissioner for an Indian tribal organization if its reservation is denied planning and service area status by the State agency. Any Indian tribal organization designated as an area agency on aging receives older Americans Act Title III funds from the Administration on Aging through the State agency on aging. In effect tribal organizations funded under Title VI would function as area agencies on aging with a direct grant relationship with the Federal government. If an Indian tribal organization receives a direct grant under Title VI, the allotment of the State in which the Older Indians served under the grant reside is reduced, based on the number of older Indians who are both counted for purposes of the State's allotment under Title III and served under Title VI.

Grants may not be made under Title VI until at least $5 million is appropriated for the program. Since no funds have yet been appropriated for Title VI, State and area agencies continue to be fully responsible for serving older Indians, many of whom are in great social or economic need and therefore should be given priority consideration under Title III.

5. *Initial Public Involvement.* We began a process of broad public input and open discussion shortly after the enactment of the amendments. This process was designed to involve many groups and organizations in the implementation of the many significant changes made by the amendments. The process began with a Working Conference held in Arlington, Virginia, November 8–11, 1978. More than 200 participants representing Congressional Committees, national aging organizations, service providers, education and research societies, States, Area Agencies, and State and Area Agency Advisory Committee members spent three days examining the amendments. Small group workshops were asked to examine the opportunity the amendments provide to improve and expand benefits to older people, to identify issues to be clarified in implementing regulations; and to recommend specific language for definitions. Recommendations from the workshops were compiled and used in the development of these proposed regulations.

Our initial drafting uncovered questions and options which we thought needed further exchange and exploration with the field of aging. The Commissioner on Aging convened six small group meetings during January 1979, to review the preliminary thinking of AoA on the issues and to give various interested groups an opportunity to raise and further clarify their recommendations. The Commissioner met with staff members from the House and Senate special and authorizing committees, with representatives from the National Association of Counties, the National Governors Association, the Council of State Government, the National Conferences of State Legislatures, the National League of Cities, the U.S. Conference of Mayors, and the International City Management Association. A similar session was held with the Executive Directors of the National Aging Organizations including, the National Council of Senior Citizens, the National Council on Aging, the American Association of Retired Persons/National Retired Teachers Association, the Association Nacional Pro Personas Mayores, the National Indian Council on Aging, the Gerontological Society, and the Gray Panthers. A meeting was also held with representatives from the major provider organizations such as the Title VII Directors, the National Association of Meal Programs, the Alliance of Information and Referral Services, the Ad Hoc Coalition of Legal Service Providers, National Institute of Senior Centers, NVOILA, Council for Home Health Agencies and Community Health Services, National Council of Homemaker and Home Health Aides, FRAC, The Dietetic Association and the National Association of Social Workers. On February 15, 1979, the Commissioner met with 25 representatives from State and Area Agency Advisory Committee and grass roots advocacy organizations to discuss both the regulations and the role older people must play in implementing Older Americans Act programs. We held two major conference telephone calls involving all 50 State agencies to give each State an opportunity to ask questions and receive clarification on our implementation of the amendments. Through this process, the Administration on Aging has tried to insure on-going dialogue with those most interested and affected by the regulations.

These proposed regulations contain all program regulations for implementation of Title III of the Act. General Departmental regulations also applicable to activities under Title III are not repeated, but are referenced in Section 1321.5. Current regulations for the social services, nutrition services, and multipurpose senior center programs are found at 45 CFR Parts 1321, 1324, and 1326. These proposed regulations would revise and simplify the content of current regulations and eliminate those provisions that are inconsistent with the new amendments, or are unnecessary, or no longer reflect AoA policy.

1. *Organization.* These proposed regulations are organized into ten subparts. Subpart A describes the basis and purpose of the regulations and contains definitions applicable to the part.

Designation of a sole State agency on aging is the first step required to receive grants under Title III. Subpart B sets forth general requirements for State agency designation and administration. The next steps are the development and submission by the designated State agency to the Commissioner of a State plan that meets all statutory and regulatory requirements, and the approval of the plan by the Commission. Subpart C specifies State plan requirements and the procedure for plan approval.

In addition to development and submission of the State plan, the State agency must perform a variety of functions in administering the Title III program in the State. Subpart D specifies these State agency advocacy and service delivery requirements.

including requirements for the long-term care ombudsmen program, State advisory council on aging, State agency hearing procedures, intrastate funding formula, and designation of planning and service areas.

State agencies are required to designate area agencies and approve area plans in planning and service areas in which the State agency decides to spend Title III funds. Services under the Title III program are provided under these approved area plans. Subpart E specifies general requirements for area agency designation and administration. Subpart F specifies area plan requirements, including the development and implementation of a comprehensive and coordinated service delivery system under the plan and procedures for approval and disapproval of an area plan. Subpart G specifies area agency responsibilities, including designation of community focal points, establishment of the area agency advisory council, and coordination with other programs serving older persons.

Once an area plan is approved, services may be funded under it. Subpart H specifies service delivery requirements for all Title III services. The regulations would impose a series of general requirements for all services, including restrictions on profit-making contracts and direct service provision by State and area agencies, and requirements on all service providers for licensure, training, outreach, coordination, preference for those in greatest economic or social need, contributions, maintenance of non-Federal support for services, and advisory roles for older participants. We are proposing specific service delivery requirements for those five services for which the Act contains specific requirements: multipurpose senior centers, nutrition services, legal services, information and referral, and transportation.

The two final subparts of the regulations contain proposed fiscal requirements and State agency hearing procedures. Subpart I contains proposed fiscal requirements, including requirements for initial allotments, allowable uses of allotments, reallocating allotted funds, mandatory minimum expenditure requirements, and Federal program review and audits. The Federal program review and audit sections would put in regulations our present review practices. Subpart J contains proposed procedures for notice and hearing for State agencies on issues of State plan disapproval, finding that a State agency does not meet the requirements of this part, or substantial noncompliance in the provisions or administration of an approved State plan.

The organization of the proposed regulations differs in some respects from that of the Act and existing regulations. We are proposing to group the requirements in what we think is a more logical order. We are proposing to group together all State agency requirements, including those agency requirements that appear in section 307(a) of the Act as State plan requirements. We would incorporate each of these State agency requirements by reference in the section of the regulations, § 1321.25, which specifies the content of State plans. We are proposing to group separately all area agency requirements, all service delivery requirements that apply to both State and area plans, and all fiscal requirements. For example, section 307 of the Act requires a State plan to provide that the State agency will evaluate the need for services (307(a)(3)(A)), spend in rural areas 105% of the amount spent in fiscal 1978 (307(a)(3)(B)), and afford an opportunity for a hearing to all area agencies and providers (307(a)(5)). We have placed the evaluation and hearing requirements under State agency responsibilities, §§ 1321.45(a)(8), and 1321.51, and the rural expenditure requirement under Subpart I, § 1321.193.

The area plan requirements under section 306 include area agency and fiscal requirements. For example, section 306(a)(6) imposes nine functions on an area agency. We have placed those requirements in Subpart G, area agency responsibilities, under §§ 1321.91 and 1321.93, and incorporated them by reference in the section specifying content of an area plan; section 1321.77. Section 306(a)(2) imposes a 50 percent priority services expenditure requirement on area plans—these regulations would place that requirement in Subpart I, § 1321.195.

We have also included as State or area agency responsibilities, with references in the plan sections, certain additional State and area plan requirements that we think must logically be performed by the agencies. Examples are the requirement of section 306(a)(3) that the area plan designate community focal points, and the requirement of section 307(a)(11) that the State plan provide that hiring preference in State and area agencies will be given to older persons.

These regulations would use a similar structure for the service delivery requirements. Many of the statutory requirements for nutrition, legal services, and senior centers are drafted as State plan requirements, in the future tense. We would draft them as present requirements on each provider of the service, and incorporate the requirements by reference in the State and area plan content sections.

We particularly invite comment on whether our proposed organization and structure of the requirements makes the regulations easier to use, and clarifies the effect of the requirements.

Major Issues

1. *Organization of the sole State agency on aging.* A major issue raised in these proposed regulations is the organization of the sole State agency on aging. Section 305(a)(1) of the Act requires a State to designate a sole State agency on aging to develop and administer the State plan, to coordinate all State activities related to the purposes of the Act, and to serve as the effective and visible advocate for the elderly in the State. The legislative history, particularly the conference report on the 1975 amendments,[4] makes clear that the purpose of the sole State agency requirement is to ensure that there be a strong and easily-identifiable State agency on aging, and that limited funds under this Act be used in a way that maximizes their effectiveness in meeting the needs of older persons. Our present regulations at 45 CFR 1321.13 and 1321.34 allow a State to designate either a multipurpose or an independent single purpose agency as the sole State agency, but require a multipurpose agency to designate a single organizational unit whose principal responsibilities are in the field of aging to administer Older Americans Act programs.

We are proposing to remove this requirement because some State agencies, many of which also administer other Federal programs providing services to older persons, have commented that a State agency could better carry out its responsibilities to coordinate all State activities related to aging, and to maximize the effectiveness of service delivery to older persons, if it was given more flexibility in organizing the administration of Older Americans Act programs within the agency. We agree that it is important to allow State agencies the flexibility to administer their programs in a way that will increase effective service delivery to older persons. (The legislative history of the 1978 amendments indicates that Congress was deeply concerned about the fragmentation of existing services to older persons, and mandated the

[4] 94th Cong. 1st. Sess. House. Rept. No. 94-670, p. 36.

consolidation of nutrition, social, and multipurpose senior center services under this Act as a first step in reducing this fragmentation.)[5]

Since our present single organizational unit requirement is not required by the Act, we are proposing to remove it, and to allow a multipurpose State agency the option of assigning responsibilities under the Title III program to a designated unit, including one whose only responsibilities are in the field of aging. State agencies on aging that chose not to administer the Title III program through a single aging unit would, of course, still be required to administer their programs in a way that met fully their statutory advocacy and service delivery responsibilities to older persons. We are also proposing to eliminate the present single organizational unit requirement in section 1321.64 for area agencies.

2. *State agency procedures.* These proposed regulations would require State agencies to develop and use written procedures in carrying out all of their functions under this part. The proposed regulations specify a notice and comment process for development of these procedures that is designed to ensure that interested persons have an adequate opportunity to participate in that development. Section 305(a)(2)(B) specifically requires that a State agency provide satisfactory assurances that it takes into account the views of older persons in developing and administering the plan, and section 307(a)(4) of the Act requires that a State plan provide for the use of methods of administration that are necessary for the proper and efficient administration of the plan. In our view, the lack of standard written procedures, openly developed, has frequently resulted in problems in the administration of Older Americans Act Programs. If a State has its own rulemaking process that satisfies our proposed requirements, it could of course, follow that process. We are also proposing to require area agencies to develop and use written procedures in carrying out their functions.

3. *Hearing requirements.* A significant issue in the development of those proposed regulations has been the implementation of the various hearing requirements specified in the Act. The former Titles III and VII each required notice and opportunity for a hearing before the Commissioner prior to withholding of grants from a State's allotment for failure to meet State agency or State plan requirements. Our present regulations do not specify any procedures for these hearings. Section 307 (c) and (d) of the amended Act retains this pre-termination requirement. Other sections of the Act impose several new hearing requirements. Section 305(b)(1) requires a State agency to give an opportunity for a hearing, on application, to any unit of general purpose local government with a population of 100,000 or more that applies for designation as a planning and service area, and section 305(b)(4) requires the Commissioner to give an opportunity for a hearing to any unit of general purpose local government, region, metropolitan area, or Indian reservation that is denied designation as a planning and service area by the State. Section 307(a)(5) of the Act requires the State plan to provide that the State agency will give an opportunity for a hearing to any area agency, service provider, or service provider applicant.

Section 501(b) of the amendments requires the State agency to provide a hearing prior to defunding nutrition projects that were receiving funds under the former Title VII on September 30, 1978, the day before the effective date of the amended Act.

These proposed regulations set forth four types of hearing procedures to implement these various statutory requirements: (1) general State agency hearing requirements for area agencies, providers, and planning and service area applicants (§ 1321.51); (2) hearing requirements for units of general purpose local governments of 100,000 or more that apply for designation as planning and service area; (§ 1321.51(d)); (3) hearing procedures before the Commissioner for denial of planning and service area designation (§ 1321.55); and (4) hearing procedures before the Commissioner for plan disapproval and compliance actions (§§ 1321.235 to 1321.269). We recognize that it may be confusing to require four types of procedures, but think that the statutory rights created are sufficiently different in nature that different processes are required.

Section 307 (c) and (e) provide for a formal hearing before the Commissioner on plan disapproval and compliance actions, with a right of judicial appeal based on the hearing record before the Commissioner. Since the statute requires a formal hearing record, for purposes of judicial appeal, and termination of all or a portion of a State's funding under its plan would obviously have a major impact, we think that detailed procedural requirements are necessary for these hearings. We are therefore proposing in Subpart J to adopt, with minor modifications, the State plan disapproval and compliance procedures used by the Department in other State plan programs, including titles IV-A (AFDC), XIX (Medicaid) and XX (Social Services).

In our view, the hearing process before the Commissioner for denial of planning and service area designation should be much less detailed than that required for State plan disapproval. In these designation hearings, the Commissioner would simply be reviewing, on request, designations for which the State agency has statutory responsibility. In § 1321.55 we are proposing to limit the hearing procedures before the Commissioner to an opportunity for the appellant to be represented and to present evidence, and are not providing for an opportunity to cross-examine or present witnesses. We are proposing a limited standard of review under which the State's decision would be upheld if the State followed prescribed hearing procedures and its decision was not manifestly inconsistent with the purposes of the Act.

In § 1321.51 we are proposing a uniform set of hearing procedures for all hearings that the State agency is required to conduct except for those hearings for units of general purpose local government with a population of 100,000 or more, which by statute have a right to hearing on application to be a planning and service area.

We would vary the timing of the hearing (before or after final agency action) according to the type of action being taken and the nature of the rights involved. We are also proposing to limit the State agency hearings requirement to those cases in which the State or area agency proposes to take or has taken an adverse action. While the language of section 307(a)(5) is broad, and might be read to require a State agency hearing to an area agency or provider before any adverse action is contemplated, the Senate report on the Senate bill S. 2850 in which this requirement originated; characterizes this hearing requirement as an "appeal mechanism".[6] We think, therefore, that the Congressional intent will be carried out if we limit this requirement to actions of an adverse nature.

Because of the significance of the action, we are requiring that the State agency conduct a hearing prior to any final decision regarding area agency de-designation, area plan disapproval or noncompliance. (See section 1321.131 to 1321.269.)

We are also requiring in § 1321.141(b)(3) a prior hearing, as does section 501 (b) of the amendments, for nutrition projects protected by that

[5] Senate, Rept. *supra*, p. 4.

[6] Senate Rept. *supra*., p. 11.

section. The issues raised in the implementation of that section are discussed below under nutrition services.

We particularly solicit comments on whether State agency hearing procedures for service providers which are denied funding by an area agency should be less extensive than hearing procedures for an area agency which is de-designated or whose area plan is disapproved, or a unit of general purpose local government or region whose application for planning and service area designation is denied. (*See* § 1321.51(a).)

4. *Intrastate funding formula.* Section 305(a)(2)(C) of the Act imposes a new requirement on State agencies to develop an intrastate formula, in accordance with guidelines issued by the Commissioner, for distribution under area plans within the State of funds received under Title III. The Senate Report on S. 2850, in which this requirement originated,[7] indicates clearly that Congress intended the Commissioner to prescribe broad criteria for the formula, and review and comment on each State's proposed formula against those criteria, but to allow each State flexibility in developing its formula to meet the particular needs of older persons within the State.

The Act requires that the State take into account the distribution of population age 60 and older in the State in developing its formula. In § 1321.49, we are proposing a series of additional general criteria to be used in developing the formula, including requirements that the formula contain a minimum funding base for each area plan, meet the 105 percent requirement for rural areas, and reflect the distribution of older persons with greatest economic need and the distribution of other resources available to meet the service needs of older persons.

We are proposing a minimum funding requirement for each area agency because we think that a formula based solely on population and the other factors we have specified might not allow an area agency sufficient funds to carry out statutory area agency and area plan requirements. We are not proposing to require that the State agency use the distribution of older persons with greatest social need in developing its formula, because we do not think that States have sufficiently precise data on persons with greatest social need. Since Title III funds are to be used to coordinate, concentrate, and increase services to older people, we think that any formula for distribution of Title III funds should reflect the distribution of other available resources.

Because the intrastate funding formula is closely tied to the State's resource allocation plan, we are proposing that the State agency submit its formula to the Commissioner for review and comment as an attachment to the State plan. We are not, however, proposing to require the Commissioner's approval for either the resource allocation plan or the intrastate funding formula, provided that the State's formula meets the specified criteria.

We also want States that allocate other Federal and State funds to area agencies to use in funding services that could be funded under Title III, to allocate these funds in a way that will maximize their effectiveness in serving older people. We therefore encourage States to distribute these funds under their intrastate formulas.

5. *State plan based on area plans.* Section 307(a)(1) of the Act requires that the State plan contain assurances that the State plan "will be based on area plans developed by area agencies on aging within the State." There is no guidance in the legislative history on the meaning of this requirement, or on how Congress intended it to be implemented. In our view, the purpose of this requirement is to assure a close relationship between the provisions in State and area plans for advocacy and services system development. We do not believe that it is the intent of the requirement that State plans be a simple compilation of area plans or that the development of State plans follow in time the development of area plans.

To assume that "based on" means that a State plan should be merely a compilation of area plans would restrict the authority of the State agency in a manner which is inconsistent with the responsibilities assigned to the State agency in the Act for statewide management of the Title III program. Since the State agency designates area agencies, approves and funds area plans; the authority of the State agency for the State plan could not be controlled by the content of the area plans.

In our view, it would also not be feasible to interpret "based on" to require the State agency to develop the State plan after area plans are developed unless we specified uniform planning cycles in these regulations for State and area plans. We would prefer to allow State and area agencies the flexibility of continuing to set their own planning cycles.

The proposed regulations provide at § 1321.29(a) that the State agency must carry out the "based on" requirement of section 307(a)(1) by giving all area agencies in the State adequate opportunity to participate in the development of the State plan in order to ensure that the objectives established in State and area plans are consistent. We think this provision satisfies the intent of the Act and avoids the problems of interpretation mentioned above.

6. *Comprehensive and coordinated services delivery systems.* Section 306(a)(1) of the Act requires that each area plan must provide, through a comprehensive and coordinated system, for social services, nutrition services, and, where appropriate, for the establishment, maintenance, or construction of multipurpose senior centers within the planning and service area covered by the plan. Section 302(1) of the Act states that the purpose of a comprehensive and coordinated system is to provide all necessary social and nutrition services to older persons in a planning and service area. The system, according to the Act: (1) must be designed to facilitate access to and use of all services; and (2) must develop and use services effectively and efficiently, with a minimum of duplication.

We believe that the Act places on each area agency the responsibility to develop a comprehensive and coordinated system over time, that is, there is an evolutionary meaning to the word "develop." We also believe that the Act intends the "system" to include all social and nutritional services in the planning and service area, not just Title III funded services. We have based § 1321.75(a) of the proposed regulations which sets forth the components of an ideal system on these two assumptions.

Section 321(a) of the Act specifies a large number of social services that may be funded under Title III. We believe that the services and those services funded under other programs which are included in the comprehensive and coordinated system can be grouped into four major categories. The first category includes those services which facilitate access to other services. The remaining three categories are based on the point at which the service is delivered: in the community, in the home, in care providing facilities.

Section 1321.75(b) of the proposed regulations uses these four categories as unifying concepts and lists the individual services mentioned in each service under one of the categories. We recognize that in some instances a service listed in one of the latter three

[7] Senate Rept. *supra*, p. 8.

categories may also be provided under other categories. For example, "legal services" appears as a service provided in the community; but, depending on circumstances, "legal services" may be provided in the home or in a care providing facility. To avoid repetition, we usually chose to list each service only once, in the category in which it would most often be provided.

7. *Community Focal Point.* Section 306(a)(3) of the Act requires each area plan to designate, where feasible, a focal point for comprehensive service delivery in each community to encourage the maximum collocation and coordination of services for older persons. The Act requires area agencies to give special consideration to designating multipurpose senior centers as focal points.

Section 1321.3 of the proposed regulations contains a definition of community focal point which is based on section 306(a)(3) of the Act. The proposed definition provides that a community focal point may be a mobile facility. Section 321(b)(1) of the Act allows mobile units to serve as multipurpose senior centers. Since the Act also directs area agencies to give special consideration to designating multipurpose senior centers as focal points, we believe it is logical to include mobile facilities in the definition of community focal point.

The Senate report indicates that Congress intended that there be a renewed emphasis on the concept of a single focal point for service delivery within each community.[8] The legislative history does not provide further guidance on how this requirement should be implemented. The proposed regulations set up a process for the implementation of the focal point requirement. As a first step, all area agencies would be required to divide the entire planning and service area into "community service areas" in order to decide in which communities to designate focal points.

We have intentionally chosen not to define the term community. We decided to leave to each area agency the responsibility of defining "community" for its own planning and service area. We reached this decision for two reasons. First, we reviewed a significant number of commonly used definitions of "community" but did not find a definition which we thought had general validity for Title III programs. Second, we believe that each area agency is in the best position to know the composition and appropriate subdivisions of its own planning and service area. The proposed regulations at § 1321.95(b)(1) specify a set of criteria which the area agency must consider in designating community service areas. These criteria are similar to those specified in § 1321.53 for the designation of planning and service areas. The proposed regulations however, leave to the discretion of the area agency the manner in which it applies these criteria.

We believe the Act intends that a community focal point be a unique type of place within the community, a place which has broader and more responsible functions than other service agencies or multipurpose senior centers. For this reason, we are proposing that the area agency designate one community focal point in each community and are prescribing a series of minimum functions for a community focal point in § 1321.95.

8. *Continuity of services in a planning and service area.* Section (307)(d) of the Act prescribes the methods by which the Commissioner may provide for the continuity of services in a State that has had grants from its allotment withheld for failure to meet State agency or State plan requirements. The Act does not contain a comparable provision for continuity of services in a planning and service area when the State agency must terminate an area agency. Section 307(a)(5) of the Act gives an area agency the right to a hearing before the State agency, and § 1321.51 of the proposed regulations prescribes the procedures for such a hearing. However, our present regulations do not provide a method for States to assure that services to older persons in a planning and service area are not disrupted when a State terminates funding to an area agency.

We believe there are sound programmatic reasons to specify in these proposed regulations procedures for States to follow when they terminate area agency funding. Section 1321.85 (b) and (c) of the proposed regulations specifies a three-step process: a State must notify the Commissioner in writing of its actions; provide a plan for the continuity of services in the affected planning and service area; and act in a timely manner to designate a new area agency.

We believe that the termination of funding of an area agency by the State agency is a drastic action which should take place only after extended efforts by the State to assist the area agency, including providing the area agency the hearing required in § 1321.51. When a State agency foresees the possibility of termination, it should identify a potential successor agency that could be designated to immediately assume the responsibilities of the terminated area agency. We recognize that there are circumstances in which there may be a delay in designating a successor area agency. For this reason § 1321.85(c) of the proposed regulations allows the State agency, for a period of 180 days after it withdraws designation of an area agency, to perform the responsibilities of the area agency directly or assign them to another agency in the planning and service area.

9. *Direct services.* A major issue in the development of these regulations has been determining the circumstances under which State and area agencies may directly provide services. Section 305(a)(8) of the former Title III contained a prohibition on direct provision of social services by a State or area agency unless the State agency determined that direct provision was necessary to assure an adequate supply of the service. Our implementing regulations at 45 CFR 1321.67 divided social services into two groups: (1) information and referral and coordination; and (2) all other services. Under these regulations, State agency approval is required for the first category of services, but no test for an adequate supply is imposed. For the second category of services, direct provision is prohibited unless it is necessary to assure an adequate supply and no other agency can or will effectively provide the service. Area agencies which were providing services directly prior to their designation are exempted from the requirements of this section. The former Title VII did not contain this direct services prohibition, and it is our understanding that some area agencies were providing nutrition services directly. Section 307(a)(10) of the Act, as amended, extends the prohibition to nutrition services as well.

We have reviewed this prohibition carefully together with our proposal to remove the single organizational unit requirement for both State and area agencies. After thorough review, we have concluded that the statute requires that all direct service provision by all State and area agencies, including provision of coordination and information and referral, be subject to some test for adequate supply. We recongize that there is a clear difference in the kinds of services provided under State and area plans. Some of these services, such as information and referral, advocacy, and outreach, are directly related to an area agency's statutory advocacy and service delivery responsibilities—responsibilities that must be carried out consistently throughout the planning and service

[8] Senate Rept., *supra*, p. 7.

area, and for which a less stringent test for adequate supply seems appropriate. We are therefore proposing that an area agency be allowed to provide these services directly if the State agency determines that the area agency can provide them more effectively and efficiently.

Other social and nutrition services should, in our view, not be provided directly except in unusual circumstances. The conference report on the 1978 amendments characterizes section 307(a)(10) as a requirement that direct services not be provided "except as a last resort."[9] For these services, our proposed regulations retain the test in the present regulations, and would require the area agency to subgrant or contract for the services unless the State agency determined that no other agency could or would effectively provide the service. We would also allow an area agency that was providing a direct service prior to its designation to continue to provide the service if requiring it to stop would result in disruption of the service.

Since section 304(d)(1)(B) provides that all of a States allotment, with the exception of administrative funds, be used for social and nutrition services under parts B and C of the Act, provided under approved area plans,[10] we think that a single planning and service area State, in which the State agency also functions like the area agency, is the only type of State in which the State agency would now have the authority to provide services directly. These proposed regulations would apply the same tests for direct service provision to single planning and service area States as are applied to area agencies.

A final issue arises whether the direct service restriction applies to all funds administered by the area agency or only services funded under Title III. This is particularly important issue for multipurpose agencies that might choose not to designate a single organizational unit. We are proposing to limit this restriction to services funded under Title III only. We recognize that this distinction may well result in a multipurpose agency being required to make an award for home health services, for example, under Title III, but use its own staff nurse to provide the services directly under Title XX. We particularly solicit comment on problems that may be raised by this requirement, and possible solutions for those problems.

[9] House. Rept. No. 95-1618, *supra*. p. 71.

[10] The ombudsman program is the only exception to this requirement.

10. *Greatest economic or social need.*

a. *Economic or social need and minority status.*—Sections 305(a)(2)(E) and 306 (a)(5) of the Act require respectively that State and area agencies assure that preference will be given to providing services under their plans to older persons with the greatest economic or social needs. This is a new provision in the Act, and the legislative history does not indicate Congressional intent concerning the definitions of "greatest economic or social need."

Section 705(a)(4) of the former Title VII required that preference be given to serving primarily low-income older persons. The former Title III required only that the State and area agency include the number of older persons with low incomes in determining the incidence of need for social services. (Sec. 304(a)(1)(E) and (c)(1)) Existing Title III regulations at § 1321.48(c) define "low income" as below the current Department of Commerce, Bureau of Consus poverty threshold.

In section 1321.3 of the proposed regulations, we have proposed three options for the definition of "greatest economic need". Based on our review of the comments received, we will select one definition for the final regulations. Option 1 defines greatest economic need as the income level below the poverty threshold established by the Department of Commerce, Bureau of Census. This is the same definition that is in § 1321.48(a) of our present regulations. This is the lowest income level of the level of three proposed. Bureau of Census data indicate that in 1975, 31% of unrelated individuals age 65 and older, had incomes below below $2,572 and 8.9% of families with the head of household age 65 and older, had incomes below this level.

Option 2 defines greatest economic need as the income level below the "near poverty" threshold established by the Bureau of Census. These income levels are somewhat higher than the "poverty" threshold. In 1975, 48.2% of unrelated individuals age 65 and older and 15.8% of families with the head of household age 65 and older had incomes below this level.

Under option 3 greatest economic need is defined as the income level that falls below the maximum income level for eligibility under Title XX of the Social Security Act in each State. Under Title XX, all recipients of Supplemental Security Income benefits are eligible for services. Otherwise, the family's gross monthly income must be less than 115% (or less at State option) of the median income for a family of four in the State. This income level is adjusted for family size. The median income for a family of four in each State is set annually by the Secretary of Health, Education, and Welfare.

The Title XX definition of greatest economic need represents the highest income levels of the three proposed definitions. When the Title XX definition is applied in eight sample States (Cal., Fla., Ga., Mass., Neb., Pa., Tx., and W. Va.), over two thirds of all elderly families and unrelated individuals would be in greatest economic need. Also, the Title XX definition of greatest economic need varies significantly by State. These variations are due not only to variations in median income levels but to service eligibility standards established by States.

We considered at great length how to define greatest social need. The legislative history does not indicate the specific meaning with which the Congress used the term. Section 1321.3 of the proposed regulations defines "greatest social need" as meaning isolation, physical or mental limitations, racial or cultural obstacles, or other non-economic factors which restrict individual ability to carrry out normal activities of daily living and which threaten an individual's capacity to live an independent life.

This definition is one which we developed based on our own program experience. We have included in the definition of those in greatest social need those older minority population groups who experience cultural and social barriers to opportunities for participation in and access to assistance and services. We particularly invite comments on this definition.

Prior to the 1978 amendments, section 705(a)(4) of the Act required that, to the extent feasible, grants be awarded to projects operated by and serving the needs of minority, Indian and limited English-speaking eligible individuals in proportion to their numbers in the State. This provision was included in program regulations issued prior to the 1978 amendments for nutrition and, with some modification, for social services. The 1978 amendments do not contain any explicit requirements relative to serving minorities in proportion to their relative numbers in the population, although all programs under the Act must, of course, comply with the requirements of Title VI of the Civil Rights Act. Rather, the specific emphasis in the Older Americans Act is now on those older persons with the greatest economic or social need. We believe, however, that there is considerable evidence that a high proportion of minority older persons are among those

in greatest need, and that State and area agencies on aging should therefore continue to emphasize services to minorities and to assure full participation of minorities in programs supported under the Act.

b. *Means test.*—The legislative history of the Act has consistently stressed that means testing was prohibited under the Act. The Senate Report on the 1973 amendments, for example, stated: "the Older Americans Act was never intended to operate as a welfare program in the sense that it does not contain a means test and its services are not restricted to those with incomes below the poverty line." [11]

The 1978 Conference Report in several places emphasizes that inclusion of a preference for those with the greatest economic or social needs is not to be interpreted as a first step toward requiring a means test for programs under the Act. [12]

We have consistently advised States and area agencies that they could not use income screening to determine the eligibility of an older person to receive services under the Act. However, because we did not specifically prohibit means testing in our program regulations and because the Act does not contain a specific prohibition, we have received reports that some providers may be using types of means testing. Therefore, § 1321.25(g)(4)(ii) and 1321.77(e)(6)(ii) of the proposed regulations provide that in determining how to give preference to older persons with the greatest economic need, State and area agencies may not use a means test. The propose regulations define a means test as the use of an older person's income or resources to deny or limit that person's receipt of services under Title III. We recognize that this is a strict definition of means testing and particularly encourage comments on it.

c. *Potential conflict.*—Some may feel that the proposed regulations present a conflict by requiring, on the one hand, emphasis on serving those with the greatest economic need and prohibiting, on the other hand, the use of a means test. We recognize that there is a tension between these two requirements but believe that State and area agencies and service providers can implement both requirements by using methods similar to those suggested by the conferees with respect to legal services. The conferees stated:

> Concentration on the elderly with the greatest need should be effectuated through such means as location of offices, referral of ineligible applicants from Legal Services Corporation projects, development of expertise in certain areas of the law, or general guidelines which the project post or give to an applicant providing information on the nature of the clientele usually served there and those eligible for services at the Legal Services Corporation project. [13]

11. Contributions. Section 307(a)(13)(C)(i) of the Act provides that each nutrition project will permit recipients of grants or contracts to charge participating individuals for meals furnished in accordance with guidelines established by the Commissioner, taking into consideration the income ranges of eligible individuals in local communities and other sources of income of the recipients of a grant or contract. This provision is carried over from section 705(a)(2)(A)(ii) of the former Title VII.

Program regulations at § 1321.44 interpreted the former section 705(a)(2)(A)(ii) as permitting only voluntary contributions by older persons receiving nutrition services. The regulations prohibited mandatory charges for meals and provided that no individual could be denied participation in the nutrition program because of an inability to pay all or part of the cost of the meals served. The legislative history indicates that Congress was aware of our interpretation of charges. The House Report on the 1978 amendments states:

> Participants may pay for meals based on what they can afford. A suggested fee schedule usually is developed locally, but each participant decides whether and how much to pay. [14]

The Act has never specifically provided for contributions for services other than nutrition services. Regulations for the former Title III at § 1321.142 provided that older persons who received social services must be given an opportunity to contribute to all or part of the cost of the service.

We are proposing to continue our present policy of permitting only voluntary contributions, but not mandatory charges for all services under Title III. The proposed regulation also prescribes procedures which are intended to protect the privacy of each older person and to assure proper handling of contributions.

Section 1321.111(a)(7) of the proposed regulations requires as a general rule that all contributions received be used to expand the services of the provider for older persons. We believe this proposed rule is consistent with the requirement in section 302(1)(B) of the Act that the comprehensive and coordinated system use available resources efficiently. This section of the proposed regulations also requires, as does section 307(a)(13)(C)(ii) of the Act, that nutrition service providers use all contributions solely to increase the number of meals served.

12. Definition of Rural. Section 307(a)(3)(B) of the Act provides that each State agency must spend in each fiscal year, for services to older persons in rural areas, at least 105 percent of the amount spent for services in rural areas in fiscal year 1978 under the former Titles III, V, and VII.

The Act does not define "rural area" and the legislative history does not indicate what is meant by the term. Section 1321.193 of the proposed regulations sets forth three possible options for the definition of "rural area".

Option 1 is based on a planning and service area definition of rural area.

Option 2 is based on a county definition of rural area.

Option 3 is based on geographic areas defined by State criteria which are approved in the State plan.

We sought to develop a definition of rural area which was widely accepted and which met the particular requirements of section 307(a)(3)(B) of the Act. In order to compute the required 105 percent we believe it is necessary to define rural area in a manner that fits with the service funding patterns under Title III, which are usually on either a planning and service area or a county basis.

We also believe that to define rural area using the single criterion of population might work to the disadvantage of an area which is close to a densely populated area. For this reason, in both the planning and service area and county based definitions of a rural area, we would require that only two out of three proposed criteria be met. We included option 3 because we think there may be factors we have not considered. We would prefer, if possible, to have a standard national definition. We, therefore, particularly solicit comments on options 1 and 2.

13. Priority Services. Section 306(a)(2) of the Act provides that each area plan shall provide assurances that at least 50 percent of the amount allotted for Part B to the planning and service area will be expended for the delivery of—

(a) services associated with access to services (transportation, outreach and information referral);

(b) in-home services (homemaker and home health aide, visiting and telephone reassurance, and chore maintenance); and

[11] 93rd Cong. 1st. Sess. Senate. Rept. No. 93-19, p. 5.

[12] House Rept. 95-1618, *supra.*, pp. 65, 68, 69.

[13] House. Rept. 95-1618, *supra.* p. 65.

[14] House Rept. No. 95-1150, *supra.*, p. 8.

(c) legal services; and that some funds will be expended for each category of services.

Section 306(b)(2) provides that the State agency may waive this requirement if it determines that the need for any category of services is being met.

This provision of the 1978 amendments replaced the priority services provisions introduced into the Act with the 1975 amendments. In commenting on the reasons for including a revised priority services provision in the 1978 amendments, the Senate committee report indicated concern that despite the 1975 priority programs, very few services are provided in-depth in local communities.[15]

the proposed regulations address access, in-home and legal services in two sections. Section 1321.75 of the proposed regulations prescribes the components of a comprehensive and coordinated services delivery system. Section 1321.195 of the proposed regulations prescribes the rules for the fifty percent requirement. Only those services specified in the Act and listed in § 1321.195(a) may satisfy the 50 percent requirement. Additional services listed as access services (e.g., service management), or in-home servies (e.g., casework) under § 1321.75 of the proposed regulations may not count toward meeting the 50 percent requirement. We believe that in listing specific services under section 306(a)(2) of the Act, Congress intended to prescribe a limited number of services to which it wished to target title III social service funds. We also believe, however, that there are a number of other services which from a program perspective, are access or in-home services. We have included these as components of the comprehensive and coordinated service delivery system described in section 1321.75 of the proposed regulations.

14. *Legal Services.* Several issues arise with respect to the delivery of legal services.

a. *Which legal services should be funded under Title III, and how should the State agency determine whether the need for those services is being met.*— Section 302(4) of the Act specifically defines legal services as services provided "to older individuals with economic or social needs." Section 307(a)(15)(A)(iii) requires area agencies to attempt to involve the private bar in legal services funded under Title III, and section 307(a)(15)(B) requires coordination with Legal Services Corporation (LSC) grantees in order to concentrate provision of Title III legal services to those older persons with greatest needs who are not eligible under the Legal Services Corporation Act (LSCA). The issue arises how Title III legal services providers can coordinate their services with the services available from the private bar to those older persons who can pay for them, and with those services available to persons who are eligible under the LSCA. We want States, area agencies and providers to select methods of carrying out this concentration requirement that will respect the sensitivity and dignity of older people.

The Conference Report on the legal services provision indicates clearly that Congress did not intend to allow a legal services provider to carry out the requirement of concentration either through means testing or through requiring an older person to first apply for LSC assistance.[16] Our proposed regulations at § 1321.25 would explicitly prohibit the use of means testing for any Title III service. The Conference Report suggested that the targeting requirement be implemented by such means as location of offices or selection of the types of legal services provided. In our view, concentration on those types of services that poorer or vulnerable older people are most likely to require is probably the best way of targeting the use of Title III funds on those individuals who are not having their legal services needs met through either the private bar or LSC assistance.[17]

Section 306(a)(2) requires each area agency to spend "some funds" in each of three categories: Legal services, in-home services, and access services, unless the State agency determines that the need for any category of services is being met. The issue arises with respect to legal services, particularly, whether we should prescribe some minimum funding level. The legislative history of this requirement makes clear that the percentage of funds to be spent on each category should be left to each area agency, and does not indicate what factors State agencies should consider in determining whether the need for a service is being met.[18] We are therefore not proposing to require any minimum funding percentages for these priority services.

We have also decided not to propose any standards for determining whether the need for legal services is being met, because we have been unable to identify standards of need that would effectively measure the special legal needs of older persons. We also considered requiring State agencies to evaluate only publicly or charitably funded legal services provided on the same income basis as Title III services when determining whether the need for legal services was being met. We decided, however, to leave the determination of need to the discretion of the State agency. We particularly solicit comment on whether we should attempt to specify standards for determining the need for legal services, or for other categories of priority services.

b. *What criteria should we prescribe for the provision of legal services?*— Section 307(a)(15)(B) provides that no legal services may be furnished unless the area agency makes a finding after assessment, "pursuant to standards for service promulgated by the Commissioner, that any grantee selected is the entity best able to provide the particular services." We considered trying to prescribe special criteria to measure the quality of legal services under Title III, but decided that it was not feasible to prescribe these specialized criteria, and that it would be sufficient to set a series of general requirements for all service providers, which area agencies could apply to potential legal services providers. Those proposed requirements, which include requirements for out-reach, training, use of elderly volunteers, and coordination with other service providers, are contained in §§ 321.105 through 1321.113. We invite comment on whether we should prescribe more detailed Federal regulatory requirements for legal services, and if so, what additional Federal requirements should be prescribed.

c. *Should there be a special means testing requirement for legal services?*— These proposed regulations at § 1321.25(g)(4)(ii) set a strict prohibition on the use of a means test to "deny or limit" services under the part. We think that the legislative history cited above fully supports such a strict requirement, but are concerned that this prohibition might be too restrictive for legal services. Legal representation can at times be very expensive, and a single client, who may well need extensive legal services may also be able to pay, at least in part, for those services. We invite comment on whether it would be feasible or appropriate to allow legal services providers to consider an older person's income and resources in

[15] Senate Rept., Supra., p. 10.

[16] House Rept. No. 95-1618, *supra*, p. 65.

[17] House Rept. No. 95-1150 *supra*, p. 16, lists public benefits programs, consumer fraud, special tax issues, guardianship, institutionalization, and probate matters as examples of issues particularly affecting the elderly in greatest need.

[18] Senate Rept., *supra*, p. 10.

deciding the extent of legal representation to provide that person.

d. *Legal Services Corporation restrictions and regulations.*—Section 307(a)(15)(A)(ii) provides that legal services providers must comply with whatever restrictions and regulations the Commissioner decides are appropriate. We have selected for inclusion in section 1321.161 of the proposed regulations four requirements that we think are clearly appropriate: those restricting outside employment and partisan political activity, and those requiring special language skills, and disclosure of operating policies and other general information. We solicit comments on these proposed requirements and, in general, on the appropriateness of including any additional LSC regulations in these regulations.

e. *Legal Services and Advocacy.*—A final issue is the extent to which these regulations should include advocacy in the definition of legal services, or require legal services providers to carry out advocacy functions. We think that the proposed definition of legal services as "legal representation to those with economic or social needs" is broad enough to include both ombudsman and advocacy responsibilities, and we encourage area agencies to use legal services providers to help carry out the agencies' ombudsman and advocacy responsibilities.

15. *Ombudsman Program.* A number of issues arise with respect to the implementation of this new program. Section 307(a)(12) of the Act sets forth minimum statutory requirements for a new mandatory nursing home ombudsman program that each State agency must operate in long term care facilities throughout the State. The program must include complaint investigation, legislative monitoring, and data collection. Section 307(a)(16) prescribes minimum funding requirements for the program. The legislative history of this new requirement indicates that Congress was impressed with the work of model projects ombudsman programs and felt that such programs should be required in each State under Title III.[19]

The statutory requirements for the new program are very extensive and raise a number of implementation issues on which the legislative history provides little guidance. The new requirements, particularly in the area of data collection and complaint resolution, generally go far beyond the scope of existing model project programs. Our experience in those programs has been helpful in focusing the issues that are raised by the new statutory requirements. However, we do not think that we have sufficient experience to enable us to propose additional regulatory requirements now. Therefore, these proposed regulations at § 1321.43 restate and clarify, but do not generally go beyond, the minimum statutory requirements.

We are raising a number of issues now on which we invite public comment. We are presenting these issues to an Ombudsman Task Force, which is meeting from time to time throughout the comment period. We will consider all comments from the Task Force and others on the issues discussed below, and will incorporate in the final regulations any further requirements on these issues that appear necessary. We particularly invite comment on the extent to which resolution of the issues raised should be left to individual States.

a. *Definition of Long Term Care Facility.*—The first issue that arises concerns the kinds of facilities which the program should be required to cover. Section 302(3) of the Act defines long term care facility as any skilled nursing facility, as defined in Section 1861(j) of the Social Security Act, intermediate care facility, as defined in Section 1905(c) of the Social Security Act, any nursing home, as defined in Section 1908(e) of the Social Security Act, and "any other similar adult care home." We are proposing three options for the definition of "any other similar adult care home" those that are (1) defined by State law or regulations, (2) licensed by the State and providing health related or supportive services to at least four older persons, or (3) defined by the State agency in the State plan and approved by the Commissioner. We will select one of these options in the final regulation. We particularly solicit comment on these options, and on whether another definition would be more appropriate. We want to adopt a definition of "adult care home" that will ensure that those institutionalized older persons in need of assistance receive it, but do not want to impose on a State agency coverage requirements which are overly burdensome. For example, our experience with the model projects programs indicates that ombudsman programs will be called on to investigate complaints in many unlicensed boarding homes. However, we have not included these homes in either the first or second of the proposed definitions because we are concerned that State agencies, at least in the beginning phase of the program, might not be able to implement it in these homes as well. In the third option, of course, a State might choose to include unlicensed boarding homes if it had the capacity to provide ombudsman services to residents of such facilities.

b. *Access to facilities and patients.*—Section 307(a)(12)(B) requires a State agency to "establish procedures for appropriate access by the ombudsman to long-term care facilities and patients' records."

The issue arises how a State agency on aging, which is not responsible for licensing or certifying long term care facilities, can require access to facilities. The Health Care Financing Administration is considering proposing regulations that would require skilled nursing facilities and intermediate care facilities participating in the Federal Medicare and Medicaid programs to allow access at all times to representatives of the ombudsman program. If these regulations are issued, access to facilities and patients in the Federal programs would be assured. However, there are many facilities that would be covered by the ombudsman program that do not participate in Medicaid and Medicare. We solicit comment on how States can ensure access to these facilities, and whether we should do anything further through Federal regulations to ensure implementation of this requirement.

The issue also arises of what is "appropriate access." For example, should State procedures differentiate between paid and volunteer ombudsman staff in specifying access requirements? We have added the requirement that access to patients be provided, as well as to facilities and records. Should Federal regulations specify limits on that access?

c. *Confidentiality.*—Section 307(a)(12)(B) also requires that the State agency establish procedures to protect the confidentiality of patient records and the identity of patients and complainants. The Federal Privacy Act, 5 USC 552a does not cover these State records. Should we attempt to specify other Federal procedures in this area?

d. *Complaint investigation and resolution.*—Section 307(a)(12)(A)(i) requires the ombudsman program to "investigate and resolve complaints . . . relating to administrative action which may adversely affect the health, safety, welfare, and rights" of residents of long term care facilities. Issues raised by this requirement include:

(1) What is meant by investigation and resolution of complaints?

(2) What types of possible complaints would not be related to administrative

[19] Senate Rept., *supra*, p. 11.

action and what procedures should be followed when such complaints are received?

e. *Data collection and reports.*—Section 307(a)(12)(C) requires the State agency to establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long term care facilities and to submit reports to the Commissioner. Issues raised by this requirement include:

(1) What types of information should be collected?

(2) What procedures should be specified for the handling of information?; and

(3) What should be the frequency and content of reports submitted to the Commissioner?

We also solicit comment on any other issues and problems that commenters may identify in the implementation of this new program.

16. *Nutrition services.*—a. *Special needs.*—Section 307(a)(13)(G) of the Act provides that each nutrition services provider will provide special menus where feasible and appropriate to meet the particular dietary needs arising from the health requirements, religious requirements, or ethnic backgrounds of eligible individuals. This provision is substantively the same as section 706(a)(5) of the former Title VII.

We find that there are differences of opinion in the field as to what is meant by the words "where feasible and appropriate." Some area agencies or nutrition services providers have been reluctant to implement this requirement, and have argued that it is not feasible or appropriate to provide special diets if they are more expensive, unless the increased costs are absorbed by non-Title III funds. In our view, the clear intent of the Title III nutrition service program is that nutrition services be provided without distinction to all eligible individuals in a provider's target population. Therefore, we are proposing that a nutrition service provider provide special diets to all nutrition service participants even when special diets are more expensive than other meals. The only exception to this requirement would be when either the food or skills necessary to prepare the special diets is unavailable in the planning and service area.

b. *Home delivered meals.*—Under the former Title VII, a number of States had home-delivered meals programs, in which a limited number of meals were provided on an as-needed basis by congregate nutrition providers. The Act now explicity authorizes provision of home-delivered meals, but retains primary emphasis on congregate nutrition services. Section 307(a)(13)(B) of the Act provides that each nutrition project must provide meals in a congregate setting, "except that each such project may provide home-delivered meals based upon a determination of need made by the recipient of a grant or contract entered into under this title." The conference report makes clear that Title III funds for home-delivered meals may only be awarded to a provider that serves congregate meals, and emphasizes that every effort be made for nutrition service participants to participate in a congregate setting, unless home bound by reasons of illness, an incapacitating disability, or extreme transportation problems.[20]

Our proposed regulations at § 1321.141(b) implement this requirement by providing that the area agency may only award funds for home delivered meals to a service provider that also provides congregate meals. The proposed regulations at § 1321.147 also prescribe criteria for eligibility to receive home delivered meals. These regulations also would require that the nutrition service provider conduct initial and subsequent assessments of an older person's need for home delivered meals using these criteria, in order to ensure that home delivered meals are provided only when necessary.

Section 307(a)(13)(H) of the Act provides that each area agency must give consideration, where feasible, in the furnishing of home delivered meals to using organizations which have demonstrated ability in this area, and which agree to continue to solicit voluntary support and not use Title III funds to supplant non-Federal funds. Section 1321.147(c) of the proposed regulations provides that the nutrition services provider must give first preference in purchasing home delivered meals to an existing provider of home-delivered meals which has the capacity and willingness to provide additional home-delivered meals funded under Title III. A nutrition services provider would be able to provide home-delivered meals directly only when there is no capable and willing home-delivered meals provider in the area.

Section 337 of the Act provides that the Commissioner, in consultation with a number of agencies and organizations named in the Act, develop minimum criteria for the furnishing of home delivered meals. We consulted with the agencies and organizations in question and developed the initial minimum criteria which appear in § 1321.143 of the proposed regulations. While our original intent was to develop criteria only for home-delivered meals, we decided that the criteria were also applicable to congregate nutrition services and therefore propose to apply the criteria to all nutrition services.

We particularly solicit comment on whether these criteria are sufficient, or whether we should impose additional criteria, and if so, what those criteria should be.

c. *Consolidation of nutrition projects under area agencies.*—A major issue is the required consolidation under area agency administration of existing nutrition projects which had been funded under Title VII directly by the State agency. During the congressional debate preceding the enactment of the amendments, there was considerable concern expressed that existing projects performing effectively not be adversely affected by the change in administration. Section 106(b) of the House bill, H.R. 12255, would have required that all existing projects continue to be funded, provided they meet the requirements of the amended Title III. The Senate bill, S. 2850, did not contain this automatic protection, but the Senate Report accompanying the bill emphasized that consolidation should not adversely affect existing service providers, and that area agencies should give special attention to existing Title VII providers.[21] The conference committee retained the special protection provided by the House bill, but modified that to allow area agencies some flexibility in making nutrition services awards. Section 501(b) of the Amendments provides that:

> (b) Any project receiving funds under title VII of the Older Americans Act of 1965, as in effect on the day before the effective date of this Act, shall continue to receive funds under part C of title III of such Act, as amended by this Act, if such project meets the requirements and criteria established in such title III, as amended by this Act, except that a State, pursuant to regulations prescribed by the Commissioner on Aging, shall not discontinue the payment of such funds to a project unless such State, after a hearing (if requested by the person responsible for administering such project), determines that such project has not carried out activities supported by such funds with demonstrated effectiveness.

We notified States in Program Instruction 79-10, that States and area agencies could not terminate projects protected by this section, except under 45 CFR Part 74, Subpart M, for material failure to comply with the terms of their awards, until we issued regulations implementing this section.

[20] House Rept. No. 95-618, *supra*, p. 62.

[21] Senate. Rept., *supra*, p. 11.

Two major issues arise in the implementation of this section. The first is the definition of a project. We are proposing to define a nutrition project for purposes of section 501(b) as a recipient of a subgrant or contract, other than an area agency, to provide nutrition services that meet our regulatory requirements specified for nutrition projects in 45 CFR Part 1324. Under our proposed definition, all projects that had been directly funded by State agencies outside the area agency network would be protected but these programs that had been consolidated under area agency administration and no longer met all our regulatory requirements for nutrition projects would not be. We believe that our proposed definition would implement the congressional intent to protect any project that had been directly funded by the State agency and might therefore be threatened by consolidation under area agency administration.

The second major issue is the setting of the criteria the State agency uses to determine that a project has not performed with "demonstrated effectiveness." We considered trying to propose criteria for demonstrated effectiveness, but decided that State agencies responsible for nutrition programs within their States and knowledgeable about local standards of performance, would be better able to specify criteria that were more detailed than those required in the Act, implementing regulations, and guidelines. We are therefore proposing in § 1321.141(b)(3)(ii)(B) to require that State agencies develop criteria to measure the effectiveness of these protected projects. A State agency would not be able to apply any performance criteria that the project had not been required to meet during the term of its award.

d. *Contracting in nutrition awards.*— We are also concerned that, to the extent consistent with other requirements of the Act and these proposed regulations, nutrition funds be used as efficiently as possible. We solicit comments on whether we could improve efficiency and increase the number of meals served if we required area agencies to subcontract—thereby increasing competitive bidding—in making all nutrition awards.

17. *Multi-purpose Senior Centers.*— The 1978 amendments consolidated under area agency administration funding for multipurpose senior centers, which was formerly provided under Title V, through direct grants from the Commissioner. Area agencies are not required to award any funds for senior centers, although the legislative history indicates that Congress intended that area agencies continue to place emphasis on the development and expansion of the multipurpose senior centers as an integral part of the comprehensive and coordinated service delivery system in each planning and service area.[22] In addition, the amendments provided expanded authority for construction and staffing of centers, and require that they be given preference as designated focal points.

Since multipurpose senior centers now have an expanded role in service delivery within the planning and service area, and funds may be used for construction and staffing of the centers, we believe it is appropriate to propose minimum standards that a senior center funded under Title III must meet.

The requirements that we have proposed for senior centers in § 1321.121 are consistent with the senior center standards developed by the National Institute of Senior Centers and the Task Force on Senior Center Development. However, our proposed requirements are not as extensive as the standards proposed by the Institute or Task Force. Some of the criteria proposed by these groups are too general, or are not regulatory in nature. The criteria that we are proposing focus on the areas most critical to effective senior center operations: (1) the target group of individuals to be served; (2) the service program of the center; (3) essential coordination with other community services and programs, and (4) the physical facility from which the center program will operate.

The requirements proposed in § 1321.121(c)(2)(i) would establish, as a basic requirement, that the senior center program be a program open to all older persons of the community, with an emphasis on serving those in greatest economic or social need. Senior centers are too frequently designed for, and primarily serve, the active and mobile elderly. Senior center programs can and should significantly benefit isolated, frail and institutionalized older persons, but the programs must be designed and operated specifically to include such individuals.

Section 1321.121(c)(2) would require a senior center funded under Title III to operate a range of group activities, individual services and community services opportunities. These are generally accepted minimum services and activities for effective senior center programs. Centers would be required to provide some services in each of the four categories specified in § 1321.75, in order to ensure that a comprehensive and coordinated service delivery program is developed in each senior center receiving funds under Title III.

The requirement proposed in § 1321.121(c)(2)(iii) for coordination with other community services and programs is basic to the effective operation of a senior center program, particularly for senior centers which are community focal points. We expect that senior centers will arrange to have a variety of service and staff resources financed by other programs operate from the facility.

The general requirements proposed for the physical structure of a multipurpose senior center are designed primarily to assure that senior center programs will be readily accessible to older individuals. Centers must also meet the minimum safety and construction requirements proposed in § 1321.123, as well as the requirements of 45 CFR Part 84: Nondiscrimination on the Basis of Handicap.

Our proposal in §1321.121(C)(2)(iii) for a minimum number of 45 hours of operation is designed to ensure that each center will be open for services beyond the normal 40 hour week. Our intent is to require senior centers to have at least some evening and weekend hours. We have left discretion to each State to determine the minimum operation hours for centers in rural areas of the State.

18. *Transportation agreements.* Section 306(c) of the Act provides that, subject to regulations prescribed by the Commissioner, an area agency, or in areas of a State where no area agency has been designated, the State agency, may pool funds appropriated under Title III to enter into transportation agreements with agencies administering programs under the Rehabilitation Act of 1973, and titles XIX and XX of the Social Security Act. The language of this section is carried over from section 304(d) of the former Act.

Under the former Title III a State agency could make awards for social services directly in certain portions of the State without designating an area agency and funding these services through an area plan. Under section 304(d)(1)(B) of the amended Act, funds for social services may only be awarded through area agencies under approved area plans. Our proposed regulations at section 1321.181 would therefore provide that only State agencies in single planning and service area States could enter into transportation agreements using social service funds. In these States, the State agencies are performing the functions of an area agency. In all

[22] House Rept. 95-1018, *supra*, p. 64.

other States, only area agencies could enter into these agreements.

Section 306(c)(2) of the Act provides that funds under Title III may be used for these agreements. Our proposed regulations would provide that only social service funds, and not nutrition funds could be used. We are proposing this limitation because, except for a transition through fiscal year 1980, section 307(a)(13)(I) of the Act as amended, prohibits the use of nutrition service funds for supporting services.

19. *Allotments and Reallotments.* A number of issues arise concerning the allotment and reallotment of funds under the Act.

a. *Area agency administration.*—Under section 303(e)(1) of the former Act, a State could use not more than 15 percent of its social services allotment for area plan administration. The present section 304(d)(1) provides that:

"From any State's allotment under this section for any fiscal year—

(A) Such amount as the State agency determines but not more than 8.5 percent thereof, shall be available for paying such percentage as the agency dertermines, but not more than 75 percent, of the cost of administration of area plans; and

Since our practice is to make separate allotments for social and nutrition services, an issue arises whether a State would be required to apply the 8.5 percent to each of these allotments, thus spreading administrative costs proportionately across social services and nutrition services. We think that administrative costs should be distributed proportionately, to ensure that the fair share of these costs is borne by each type of service. We recognize that States may want flexibility in distributing administrative costs. A State might choose to charge more administrative costs to its nutrition allotment in order to allow more funds for priority social services. Alternatively, a State might choose to charge more administrative costs to its social services allotment if, for example, it decided to place priority on increasing the number of meals served. On balance, however, we believe that the problems and potential abuse of allowing a State to distribute its administrative costs disproportionately are considerable, and have decided not to allow States this flexibility. (See § 321.207(b)).

We are also proposing to allow an area agency to deduct up to 8.5 percent of its administrative allotment before applying the 50 percent priority service requirement.

b. *Nutrition reallotment.*—Section 308(b)(5) provides that a State may elect in its plan under section 307(a)(13) to transfer funds between its home delivered and congregate allotments, "for use as the State considers appropriate to meet the needs of the area served." The Act provides that the Commissioner "shall approve any such transfers unless he determines that such transfer is not consistent with the purpose of this Act." The statute could be read to require the Commissioner's advance approval for any transfer, no matter how small. We believe, however, that States should be allowed the flexibility, if possible, to transfer small amounts of funds betweeen home delivered and congregate without needing to obtain prior approval from the Commissioner. In our view, automatic transfer of small percentages of funds will not have significant impact on a State's nutrition plans, and would enable a State to respond to emergency situations. We do not foresee instances in which we would question these small transfers as inconsistent with the purpose of the Act. We therefore are proposing § 1321.199 to allow a State to transfer automatically 15 percent or less of each of its allotments. Transfers in excess of 15 percent may well involve a significant change in the manner in which nutrition services are provided, and we propose to require advance approval of each such transfer. We are particularly concerned to ensure that States carefully monitor the use of home delivered meals.

c. *Mandatory reallotment by the Commissioner.*—We have been deeply concerned over the last several years by the failure of many State and area agencies promptly to liquidate funds obligated under State and area plans. We believe that this funding backup interferes with delivery of needed services to older persons. We are considering a number of proposals for dealing with this problem. At least one of these proposals would require regulations.

Under section 304(b) of the Act, the Commissioner is authorized to reallot funds that he determines will not be used by one State to a State that he determines will use the funds. In the past, we have asked States to indicate voluntarily that portion of their allotment that they decide they will not need, and we have then realloted that money to other States. We are considering using this reallotment authority to reallocate earlier in the fiscal year unobligated portions of the allotments of those States which have significant amounts of unliquidated obligations from prior fiscal years. We would then reallocate those amounts to States that had liquidated their obligations more promptly and that had therefore shown that they could efficiently manage their resources. We are aware that this involuntary reallotment process has significant programmatic implications, and would require careful analysis to specify criteria for deciding the levels of unliquidated obligations that would justify realloting some portion of the State's remaining unobligated allotment. We particularly invite comment on this problem and the solution we are considering, as well as on other solutions that may be preferable. A similar problem exists at the area level, and we solicit also comments on how to require all agencies to liquidate more quickly.

Explanatory Note

We propose that all the regulations now appearing in Subchapter C of 45 CFR Chapter XIII be replaced by the proposed Part 1321—Grants for State and Community Programs on Aging. Part 1320—General; Part 1324—Nutrition Programs for the elderly; and Part 1326—Multipurpose senior centers would be vacated and reserved, and Part 1321 would be completely revised. (Part 1322—Research and development projects; Part 1323—Training projects; and Part 1325—Model projects on aging of 45 CFR Chapter XIII were withdrawn on February 21, 1979—see 44 FR 10504.)

Authority: Title III of the Older Americans Act (42 U.S.C. 3021 3030g). (Catalog of Federal Domestic Assistance Program Numbers: 13.633 Special. Programs for Aging Title III Parts A and B—Grants on Aging; 13.635 Special Programs for Aging Title III Part C—Nutrition Service.)

Dated: June 19, 1979.

Robert Benedict,

Commissioner on Aging.

Approved: July 3, 1979.

Arabella Martinez,

Assistant Secretary for Human Development.

Approved: July 23, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

45 CFR Chapter XIII Subchapter C is amended as follows:

PARTS 1320, 1324, and 1326 [Reserved].

1. Parts 1320, 1324, and 1326 are vacated and reserved.

2. Part 1321 is revised to read as follows:

PART 1321—GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

Authority: Pub. L. 89-73, 79 Stat. 218-226, as amended by Pub. L. 90-42, 81 Stat. 106-108; Pub. L. 91-69, 83 Stat. 108-115; Pub. L. 92-258, 86 Stat. 88 Stat. 357-358; Pub. L. 94-135, 89 Stat. 713-726; Pub. L. 95-478, 92 Stat. 1513; (42 U.S.C. 3001 et seq.).

Subpart A—Introduction

§ 1321.1 Basis and purpose of part.

(a) This part prescribes requirements State agencies must meet to receive grants to develop comprehensive and coordinated systems for the delivery of

social and nutrition services under title III of the Older Americans Act (Act). These requirements include:

(1) Designation and responsibilities of State and area agencies;

(2) State and area plans and amendments;

(3) Services delivery;

(4) Grant awards to State agencies; and

(5) Hearing procedures for State and area agencies, applicants for planning and service area designation, and service providers.

(b) The requirements of this part are based on title III of the Act. Title III provides for formula grants to State agencies on aging under approved State plans for the development of comprehensive and coordinated systems for the delivery to older persons of social services, including multipurpose senior centers, and nutrition services. Each State agency designates planning and service areas in the State, and makes a subgrant under an approved area plan to one area agency in each planning and service area. Area agencies in turn make subgrants or contracts to service providers.

§ 1321.3 Definitions.

"Act" means the Older Americans Act of 1965, as amended (42 U.S.C. 3001 et. seq.)

"Area Agency" means the agency designated by the State agency in a planning and service area to develop and administer the area plan for a comprehensive and coordinated system of services for older persons.

"Administration on Aging" means the agency established in the Office of the Secretary, Department of Health, Education, and Welfare as part of the Office of Human Development Services; and which is charged with the responsibility of administering the provisions of the Act, except for title V.

"Commissioner" means the Commissioner on Aging of the Administration on Aging.

"Community focal point" means a place or mobile unit in a community or neighborhood designated by the area agency for the collocation and coordination of services to older persons.

"Comprehensive and coordinated system" means a program of interrelated social and nutrition services designed to meet the needs of older persons in a planning and service area.

"Department" means the Department of Health, Education, and Welfare.

"Fiscal year" means the Federal fiscal year.

"Greatest economic need" means

Option 1: the income level that falls at or below the poverty threshold established by the Bureau of the Census;

Option 2: the income level that falls at or below the near property level established by the Bureau of the Census;

Option 3: the income level that falls at or below the maximum income level for eligibility in the State under title XX of the Social Security Act.

"Greatest social need" means those non-economic factors such as isolation, physical or mental limitations, racial or cultural obstacles: or other non-economic factors which restrict individual ability to carry out normal activities of daily living and which threaten an individual's capacity to live an independent life.

"Human services" means social, health or welfare services.

"Indian tribal organization" means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by the governing body.

"Indian tribe" means any tribe, band, nation, or other organized group or community of Indians (including any Alaska Native Village or regional village corporation as defined in or established under the Alaska Native Claims Settlement Act, P.L. 92–203, 85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or, is located on, or in proximity to a Federal or State reservation or rancheria.

"Multipurpose senior center" (senior center) means a community or neighborhood facility for the organization and provision of a broad spectrum of services including health, social, nutritional, educational services; and facilities for recreational and group activities for older persons.

"Nonproift" as applied to any agency, institution or organization means an agency, institution or organization which is owned and operated by one or more corporations or assoications with no part of the net earnings benefiting any private share holder or individual.

"Planning and service area" means a geographic area of a State that is designated for purposes of planning, development, delivery and overall administration of services under an area plan.

"Service provider" means an entity that is awarded a subgrant or contract from an area agency to provide services under the area plan.

"State" means each of the fifty States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Northern Mariana Islands.

"State Agency" means the single State agency designated to develop and administer the State plan and to be the focal point on aging in the State.

"Unit of general purpose local government" means a political subdivision of the State whose authority is general and not limited to only one function or combination or related functions; or an Indian tribal organization.

§ 1321.5 Applicability of other regulations.

The provisions of the following regulations apply to all activities under this part:

(a) Title 45 of the Code of Federal Regulations:

Part 74—Administration of Grants, except Subpart N;

Part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health, Education, and Welfare; Effectuation of Title VI of the Civil Rights Act of 1964;

Part 81—Practice and Procedure for Hearings under Part 80 of this Title;

Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Participation; and

(b) Title 5 of the Code of Federal Regulations, Part 900, subpart F, Standards for a Merit System of Personnel Administration.

Subpart B—State Agency Designation, Organization, and Functions

§ 1321.11 Designation and functions of the State agency.

In order to be eligible to receive grants under this part, a State must designate a single State agency to:

(a) Develop and administer the State plan;

(b) Be primarily responsible for coordinating all activities in the State relating to the purposes of the Act;

(c) Serve as the effective and visible advocate for all older persons in the State; and

(d) Direct area agencies in the development of comprehensive and coordinated service delivery systems throughout the State.

§ 1321.13 Organization of the State agency.

The State agency may be either:

(a) An agency whose single purpose is to administer programs in the field of aging; or

(b) A multipurpose agency that administers human services programs in the State. A multipurpose agency may

delegate all authority and responsibility under this part to a designated organizational unit in the agency.

§ 1321.15 State agency administration.

(a) *General rule.* The State plan must provide for the use of methods of administration which are necessary for the proper and efficient administration of the plan. The State agency must administer the plan in accordance with all applicable Federal laws and regulations, including all requirements of this part.

(b) *State agency procedures.* (1) The State agency must have and follow written procedures in carrying out all of its functions under this part that are adopted in accordance with paragraph (2) of this section.

(2) The State agency must:

(i) Develop proposed procedures;

(ii) Publish the proposed procedures in a manner that allows area agencies, providers, and older persons within the State adequate opportunity to comment on the procedures;

(iii) Consider all comments in establishing final procedures;

(iv) Have final procedures in effect no later than September 30, 1980; and

(v) Keep its procedures current, and revise them as necessary.

(c) *Functional statement.* The State agency must have on file for review a functional statement of the manner in which the State agency performs all of its responsibilities under this part.

(d) *Reports.* The State agency must submit to the Commissioner any reports that the Commissioner requires.

§ 1321.17 Staffing.

(a) *Preference.* Subject to merit system requirements, the State and area agencies must give preference in hiring for full or part time positions to persons age 60 or older.

(b) *Staffing plan.* The State agency must have on file for review a staffing plan that identifies the numbers and types of staff assigned to carry out State agency responsibilities and functions under this part.

§ 1321.19 Confidentiality and disclosure of State agency information.

(a) *Confidentiality.* (1) The State agency must have procedures to ensure that no information about, or obtained from an older person by an agency providing service under the plan, is disclosed in a form that identifies the person without his or her informed consent.

(2) The State agency must ensure that lists of older persons compiled under § 1321.171 are used solely for the purpose of providing services authorized under this part, and only with the informed consent of each individual on the list.

(b) *Disclosure.* Subject to the confidentiality requirements in paragraph (a) of this section, the State agency must make available at reasonable times and places to all interested parties the written procedures required under § 1321.15, and all other information and documents developed or received by the agency in carrying out its responsibilities under this part.

Subpart C—State Plan

§ 1321.21 What a State plan is.

A State plan is the document submitted by a State in order to receive grants from its allotments under this part. It contains provisions required by section 307 of the Act and implementing regulations and commitments that the State agency will administer or supervise the administration of activities funded under this part in accordance with all Federal requirements. A State may receive grants under this part only under an approved State plan. A State may use its grants under this part only for activities under its approved plan.

§ 1321.23 Duration and format of the State plan.

The State plan must be in effect for the three year period specified by the Commissioner. A State agency must submit a State plan or plan amendment to the Commissioner in accordance with the Commissioner's instructions concerning the format, content, time limits, transmittal forms, and procedures.

§ 1321.25 Content of the State plan.

(a) *Based on area plans.* A State plan must be based on area plans.

(b) *State agency function requirements.* A State plan must provide that the State agency function requirements are met for:

(1) Proper and efficient methods of administration, as provided in § 1321.15;

(2) Confidentiality and disclosure of State agency information, as provided in § 1321.19;

(3) State agency advocacy responsibilities, as provided in § 1321.41;

(4) State agency evaluation of service needs, as provided in § 1321.45(a)(8);

(5) Evaluation of activities and projects under the plan, as provided in § 1321.45(a)(9);

(6) Development and distribution of a uniform area plan format, as provided in § 1321.45(a)(10);

(7) Coordination of legal services as provided in § 1321.45(a)(13);

(8) Commodity distribution agreements, as provided in § 1321.143;

(9) State advisory council on aging, as provided in § 1321.47;

(10) State agency hearings for area agencies, providers, and planning and service area applicants, as provided in § 1321.51;

(11) The requirements for area plan approval and disapproval, as provided in §§ 1321.81 and 1321.83.

(c) *Area agency and area plan requirements.* A State plan must provide that the area agency and area plan requirements are met for area agency designation, and development and submission to the State agency of an area plan which complies with the requirements of section 306 of the Act and this part, as provided in §§ 1321.61, 1321.69, 1321.71, 1321.73, 1321.75, 1321.77 and 1321.79.

(d) *Service delivery requirements.* A State plan must provide that the service delivery requirements are met for:

(1) A long-term care ombudsman program, as provided in § 1321.43;

(2) Restricting direct provision of services, as provided in § 1321.103;

(3) All service providers concerning licensure, training, outreach, coordination, preference to those with greatest economic or social need, contributions, maintenance of non-Federal support for services, and advisory role for older persons, as provided in §§ 1321.105 through 1321.115.

(4) Multipurpose senior center activities, as provided in §§ 1321.121 through 1321.137;

(5) Nutrition services, as provided in §§ 1321.141 through 1321.147;

(6) Legal services, as provided in § 1321.161; and

(7) Information and referral, as provided in § 1321.171.

(e) *Fiscal requirements.* A State plan must provide that the following fiscal requirements are met for:

(1) Expenditures in each fiscal year in rural areas of 105 percent of FY 1978 expenditures, as provided in § 1321.193; and

(2) Minimum expenditures for the long term care ombudsman program, as provided in § 1321.197.

(f) *Directory of community focal points.* A State plan must assure that the State agency keeps a directory of focal points in the State.

(g) *Information requirements.* The State plan must specify:

(1) Program objectives to implement the service delivery requirements of paragraphs (d)(1), and (d)(4) through

(d)(7) of this section, which are consistent with the requirements of this part, objectives established by the Commissioner, and objectives established in area plans in the State;

(2) Documentation of the designation of the State agency;

(3) A resource allocation plan indicating the proposed use of all funds directly administered by the State agency;

(4) Proposed methods for giving preference to those with greatest economic or social need in the provision of services under the plan. These methods—

(i) Must include, but are not limited to:

(A) Consideration of older persons with greatest economic need in the division of the State into planning and service areas, as provided in § 1321.53, and

(B) Consideration of older persons with greatest economic need in the development of the intrastate funding formula, as provided in § 1321.49.

(ii) May not include use of a means test. A means test is the use of an older person's income or resources to deny or limit that person's receipt of services under this part.

(5) A resource inventory of State and Federal funds spent by other agencies in the State for services to older persons; and

(6) An identification of all planning and service areas and all area agencies in the State.

§ 1321.27 Amendments to the State plan.

The State agency must amend its plan if:

(a) A new or amended Federal statute or regulation requires a new plan provision, or conflicts with any existing plan provision;

(b) A U.S. Supreme Court decision changes the interpretation of a statute or regulation;

(c) State law, organization, policy, or agency operation changes and is not accurately reflected in the plan;

(d) The State agency proposes to add, change or delete any plan provision;

(e) The State agency has changed the designation of any planning and service area or any area agency; or

(f) The Commissioner requires further annual amendments.

§ 1321.29 Development and review of the State plan and plan amendments.

(a) *State plan based on area plans.* The State agency must carry out the requirement of § 1321.25(a) that a State plan must be based on area plans by giving all area agencies in the State adequate opportunity to participate in the development of the State plan in order to ensure that the objectives established in State and area plans are consistent.

(b) *Public Hearings.* The State agency must:

(1) Hold public hearings on the State plan and on all amendments to the State plan.

(2) Give adequate notice to older persons, public officials and other interested parties of the time, dates and locations of the public hearings.

(3) Hold public hearings throughout the State at times and locations which permit older persons, public officials, and other interested parties reasonable opportunity to participate.

(c) *Review by State Advisory Council and State A–95 Clearinghouse.* The State agency must submit the State plan or amendments for review and comment, first to the State advisory council, and then to the State A–95 clearinghouse.

(d) *Review by the Governor.* The State agency must submit the State plan or plan amendments to the Governor for review and signature.

§ 1321.31 Submission of the State plan and plan amendments to the Commissioner for approval.

The State agency must submit the State plan or plan amendments signed by the Governor to the Commissioner at least 90 calendar days before the proposed effective date of the plan, or plan amendments. The Commissioner does not consider a State plan or amendment for approval unless it is signed by the Governor.

§ 1321.33 Approval or disapproval of a State plan and plan amendments.

(a) The Commissioner approves any State plan or amendment that fully meets all Federal requirements including the requirements of this part.

(b) If the Commissioner finds that any required provision of the plan is unapprovable, he or she follows the procedures in Subpart J to disapprove the plan and withhold further payments to the State.

§ 1321.35 How a State agency is notified.

(a) *Approval.* When the Commissioner approves a State plan or amendment, the Commissioner notifies the State agency in writing.

(b) *Disapproval.* When the Commissioner proposes to disapprove a State plan or amendment, the Commissioner notifies the State agency in writing. The notice gives the reasons for proposed disapproval and informs the agency that it has 60 days to request a hearing on the proposed disapproval, following the procedures specified in Subpart J.

§ 1321.37 Effective dates and expenditures under an approved State plan or amendment.

(a) *When a State plan or amendment becomes effective.* An approved State plan or amendment become effective on the date of approval by the Commissioner.

(b) *When an agency may make expenditures under a new plan or amendment.* An agency may not make expenditures under a new plan or amendment until it is approved.

Subpart D—State Agency Responsibilities

§ 1321.41 Advocacy responsibilities: general.

The State agency must:

(a) Review and comment on all State plans, budgets, and policies which affect older persons;

(b) Conduct public hearings on the needs of older persons;

(c) Coordinate statewide planning and development of activities related to the purposes of the Act and assure that each area agency has effective procedures to coordinate programs related to the purposes of the Act within the planning and service area;

(d) Represent the interests of older persons before legislative, executive and regulatory bodies in the State;

(e) Provide technical assistance to any public or private nonprofit agency, organization, or association, or individual representing older persons;

(f) Establish and operate the long-term care ombudsman program required by § 1321.43; and

(g) Review and comment, on request, on applications to State and Federal agencies for assistance relating to meeting the needs of older persons.

§ 1321.43 Long-term care ombudsman program.

(a) *General rule.* The State agency must establish and operate a statewide long-term care ombudsman program that meets the requirements of paragraphs (c) through (e) of this section. The State agency may operate the ombudsman program directly, or by contract or other arrangement, with any public agency or private nonprofit organization, except one that is—

(1) Responsible for licensing or certifying long-term care facilities or other residential facilities for older persons, or

(2) An association, or an affiliate of an association, of long-term care facilities for older persons.

(b) *Definition.* For purposes of this section, "long-term care facility" means any:

1) Skilled nursing facility as defined in Section 1861(j) of the Social Security Act,

2) Intermediate care facility as defined in Section 1905(c) of the Social Security Act.

3) Nursing home as defined in Section 1908(e) of the Social Security Act, or

4) Any other similar adult care home:

Option 1: as defined by State law or regulations; or

Option 2: licensed by the State which provides health related or supportive social services and domicile to at least four older persons; or

Option 3: as defined by the State agency in the State plan and approved by the Commissioner.

(c) *Functions of ombudsman program.* The ombudsman program must—

(1) Investigate and resolve complaints made by or for older persons in long-term care facilities about administrative actions that may adversely affect their health, safety, welfare or rights.

(2) Monitor the development and implementation of Federal, State and local laws, regulations and policies that relate to long-term care facilities in the State;

(3) Provide information to public agencies about the problems of older persons in long-term care facilities;

(4) Train volunteers and assist in the development of citizens organizations to participate in the ombudsman program; and

(5) Carry out other activities consistent with the requirements of this section which the Commissioner determines appropriate.

(d) *Access requirements.* The State agency must establish procedures to ensure that the ombudsman program:

(i) Is given appropriate access to long-term care facilities, patients, and patients' records; and

(ii) Does not obtain access to a patient's records without the written consent of the patient or a legal representative of the patient, or unless a court orders the disclosure.

(e) *Confidentiality and disclosure requirements.* The State agency must establish procedures for confidentiality, maintenance and disclosure of records and information by the ombudsman program that protect the confidentiality of patients' records and files and meet the following requirements:

(1) No information or records maintained by the ombudsman program are disclosed unless the director of the program authorizes the disclosure;

(2) The director of the program does not disclose the identity of any complainant or resident unless—

(i) The complainant or resident, or a legal representative or either, consents in writing to the disclosure; or

(ii) A court orders the disclosure.

(3) The State agency establishes a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities, including information provided under paragraph (1) of this section, for the purpose of identifying and resolving significant problems. The State agency must submit this information to the agency of the State responsible for licensing or certifying long-term care facilities in the State and to the Commissioner in the manner prescribed by the Commissioner.

§ 1321.45 Service delivery systems responsibilities: general.

(a) The State agency must:

(1) Develop and administer the State plan;

(2) Divide the State into planning and service areas, as provided in § 1321.53;

(3) Designate area agencies in those planning and service areas for which the State decides to have an area plan developed;

(4) Approve and supervise the administration of area plans;

(5) Provide adequate and effective opportunities for older persons to express their views to the State agency on policy development and program implementation under the plan;

(6) Give preference to older persons with the greatest economic or social need in the delivery of services under the State plan;

(7) Develop an intrastate funding formula, as provided in § 1321.49;

(8) Evaluate the need for social and nutritional services in the State, and determine the extent to which other public and private programs meet the needs;

(9) Conduct periodic evaluations of activities and projects carried out under the State plan;

(10) Develop and distribute a uniform plan format and guidance for area plans that meet the requirements specified in Subpart F;

(11) Provide technical assistance to and regularly assess the performance of area agencies and programs under area plans;

(12) Establish an advisory council on aging, as provided in § 1321.47;

(13) Coordinate legal services for older persons in the State, give technical assistance, advice, and training in the provision of legal services to older persons; and make reasonable efforts to maintain existing levels of those services;

(14) Have an agreement with the U.S.D.A. State Distributing Agency, as provided in § 1321.143;

(15) Provide administrative and hearing procedures, as required under §§ 1321.15 and 1321.51;

(16) Ensure that all older persons in the State have reasonably convenient access to information and referral services; and

(17) Maintain a directory of community focal points in the State.

(b) The State agency may:

(1) Carry out training and development programs for personnel involved in implementing this part; and

(2) Enter into contracts to carry out demonstration projects of statewide significance relating to the initiation, expansion, or improvement of services provided under this part.

§ 1321.47 State advisory council an aging.

(a) *Functions of the council.* The State agency must establish a State advisory council in accordance with paragraphs (b) through (d) in this section to advise and help the agency to—

(1) Develop and implement the State plan;

(2) Conduct public hearings;

(3) Represent the interests of older persons; and

(4) Review and comment on State plans, budgets and policies which affect older persons.

(b) *Composition of the Council.* More than fifty percent of the persons appointed to the State advisory council must be at least 60 years of age.

(c) *Frequency of meetings.* The State advisory council must meet at least quarterly.

(d) *Support.* The State agency must provide staff and assistance to the State advisory council.

§ 1321.49 Intrastate funding formula.

(a) The State agency, after consultation with all area agencies in the State, must develop and use an intrastate funding formula in accordance with paragraphs (b) through (e) of this section, for the distribution of funds to area agencies under this part.

(b) The formula must:

(1) Include a minimum funding base for each area plan in the State;

(2) Assure that rural areas in the State receive at least 105 percent of the amount spent under the Act for services in rural areas in fiscal year 1978, as provided in § 1321.193;

(3) Reflect the distribution throughout the State of persons aged 60 and over with the greatest economic need; and

(4) Reflect the availability of other State and Federal funds for service authorized under this part.

(c) The State agency must publish the formula for review and comment.

(d) The State agency must submit its formula and any proposed revisions to the Commissioner for review and comment as an attachment to the State plan. The State agency must submit with the formula a summary of comments received on it.

(e) The State agency must review and update its formula at least every three years.

§ 1321.51 State agency hearing procedures.

(a) *General rule.* If requested by the person responsible for the organization, the State agency must provide a hearing in accordance with paragraphs (b) and (c) to—

(1) A designated area agency when the State agency proposes to—

(i) Initially disapprove the plan or plan amendment submitted by the agency;

(ii) Disapprove an area plan for failure to comply substantially with the requirements of this part; or

(iii) Withdraw the agency's designation;

(2) Any unit of general purpose local government, or region, that is denied designation as a planning and service area;

(3) Any service provider whose application to provide services under an area plan is denied, or whose subgrant or contract is terminated or not renewed, except as provided in part 74, subpart M of this title.

(b) *Timing of the hearing.* The hearing must be conpleted within 120 days of request.

(c) *Hearing procedures.* The hearing at a minimum must include—

(1) Timely written notice to the appellant of the basis for the decision or proposed decision, and disclosure of the evidence on which the decision is taken;

(2) An opportunity for the appellant to appear before an impartial decision maker to refute the basis for the decision;

(3) An opportunity for the appellant to be represented by counsel or other representative;

(4) An opportunity for the appellant or its representatives to be heard in person, to call witnesses, and to present documentary evidence;

(5) An opportunity for the appellant to cross-examine witnesses; and

(6) A written decision by the impartial decision maker, setting forth the reasons for the decision and the evidence upon which the decision is based.

(d) *Special rule for units of general purpose local government applying for planning and service area designation.* If requested by the person responsible for the unit, the State agency must provide a hearing on application to any unit of general purpose local government that applies to be designated as a planning and service area. In conducting the hearing, the State agency may use any procedures developed in accordance with § 1321.15 that give adequate notice and opportunity to participate to the unit and to other interested persons.

§ 1321.53 Designation of planning and service areas.

(a) *General rule.* The State agency must divide the State into planning and service areas.

(b) *Areas that may be designated as a planning and service area.*

(1) The State agency may designate as a planning and service area—

(i) Any unit of general purpose local government;

(ii) Any regional planning area, if the State decides that designation of a regional planning and service area is necessary for the effective administration of programs under this part; or

(iii) Any Indian reservation.

(2) The State agency may include in the planning and service area any areas adjacent to those specified in paragraphs (b)(1)(i) and (ii) of this section, if it decides that including the additional areas is necessary for the effective administration of programs under this part.

(3) The State agency is encouraged to include all portions of an economic development district or an Indian reservation within a single planning and service area.

(c) *Factors to be used in designation.* In dividing the State into planning and service areas, the State agency must consider:

(1) The distribution in the State of persons 60 and older with the greatest economic need;

(2)The boundaries of units of general purpose local government, regions, Indian reservations, existing economic development districts, and areas within the State established for the planning and administration of human services;

(3) The views of public officials of the units of general purpose local government; and

(4) The incidence of need for services provided under this part, and the resources available to meet those needs.

(d) *Application for designation.* The State agency must provide an opportunity to apply to be designated as a planning and service area to any unit of general purpose local government or region, or to any Indian reservation. The application for an Indian reservation must be made by its tribal organization, which is its unit of general purpose local government.

(e) *Decision.* The State agency must document the basis for its designation of each planning and service area.

(f) *Hearing.* The State agency must provide a hearing following the procedures specified in § 1321.51 to any unit of general purpose local government with a population of 100,000 or more which applies for designation as a planning and service area, and to any other unit of general purpose local government, region, or Indian tribal reorganization whose application is denied.

(g) *Timetable for designation.* The State agency must designate planning and service areas in accordance with the criteria specified in paragraph (c) of this section within 90 days after the effective date of these regulations, or July 1, 1980 whichever is later.

1321.55 Appeal to the Commissioner.

(a) *General rule.* A unit of general purpose local government, region or Indian reservation whose application for designation as a planning and service area is denied by the State agency may appeal the denial to the Commissioner under the procedures specified in paragraphs (b) through (d) of this section. The appeal for an Indian reservation must be made by its tribal organization which is its unit of general purpose local government.

(b) *State agency appeal.* The appellant must first appeal to the State agency, following the procedures specified in § 1321.51.

(c) *Time for appeal to Commissioner.* If the hearing decision by the State agency is unfavorable to the appellant, the appellant may appeal to the Commissioner within 30 calendar days of the decision.

(d) *Review by the Commissioner.* When the Commissioner receives an appeal, the Commissioner requests the State agency to submit:

(1) A copy of the appellant's application for designation as a planning and service area;

(2) A copy of the written decision of the State; and

(3) Any other relevant information the Commissioner may require.

(e) *Procedures for appeal.* The procedures for the appeal consist of:

(1) Prior written notice to the appellant and the State agency of the time and location of the hearing;

(2) The required attendance of the head of the State agency or designated representatives;

(3) An opportunity for the appellant to be represented by counsel or other reapresentative; and

(4) An opportunity for the appellant to be heard in person and to present documentary evidence.

(f) *Decision by the Commissioner.*

(1) The Commissioner issues a written decision.

(2) The Commission may—

(i) Deny the appeal and uphold the decision of the State agency;

(ii) Uphold the appeal and require the State agency to designate the appellant as a planning and service area; or

(iii) Take other appropriate action, including negotiating between the parties or remanding the appeal to the State agency after initial findings.

(3) The Commissioner upholds the decision of the State agency if the agency followed the procedures specified in §§ 1321.51 and 1321.53, and its decision was not manifestly inconsistent with the purposes of this part.

§ 1321.57 Interstate planning and service area.

(a) The Governor of each State in which a proposed planning and service area crosses State boundaries may request the permission of the Commissioner to designate an interstate planning and service area.

(b) Each Governor who requests this permission must submit the request as part of the State plan or as an amendment to the State plan.

(c) Each Governor must identify in the request the State agency proposed to have lead responsibility for administrating programs within the interstate planning and service area and must list the conditions agreed to by each State governing formation, administration, and dissolution of the interstate planning and service area.

(d) If the Commissioner approves the request for designation of an interstate planning and service area, the Commissioner reduces the allotment(s) of the State(s) without lead responsibility for the administration of programs within the area in proportion to the number of individuals 60 and older in the State(s) portion of the area, and adds the amount(s) to the allotment of the State with lead responsibility.

§ 1321.59 Single State planning and service area.

(a) *Application for designation.* A State may apply to the Commissioner for approval to designate the entire State as a single planning and service area.

(b) *Criteria for approval.* The Commissioner may approve the designation of the State as a single planning and service area if:

(1) No jurisdiction successfully applied for designation as a planning and service area under the procedures specified in §§ 1321.51, 1321.53, and 1321.55, and

(2) The State agency demonstrates that:

(i) The State is not already divided for purposes of planning and administering human services; or

(ii) The State is so small or rural that the purposes of this part would be frustrated if the State was divided into planning and service areas; and

(iii) The State agency has the capacity to carry out the responsibilities of the area agency specified in Subparts E, F, and G for the entire State.

(c) *Approval by the Commissioner.* If the Commissioner approves the application—

(1) The Commissioner notifies the State agency to develop a Single State-Single Planning and Service Area Plan;

(2) The State agency must meet all the State and area agency function requirements specified in Subparts B, D, E, and G; and

(3) The approval does not extend beyond three years.

(d) *Denial by the Commissioner.* If the Commissioner denies the application, the Commissioner notifies the State to follow the procedures specified in § 1321.53 to divide the State into planning and service areas.

Subpart E—Area Agency Designation, Organization, Functions

§ 1321.61 Designation and functions of area agencies.

(a) *General rule.* The State agency must designate an area agency in each planning and service area in which the State agency decides to allocate funds under this part.

(b) *Purpose of designation.* The area agency must:

(1) Develop and administer the area plan for a comprehensive and coordinated system of services; and

(2) Serve as the advocate and focal point for older persons in the planning and service area.

(c) *Procedures before designation.* Before designating or redesignating an area agency, the State agency must—

(1) Determine, through an on-site assessment, the capacity of the agency to carry out all the functions of an area agency specified in this part; and

(2) Consider the views of the unit or units of general purpose local government within the planning and service area.

(d) *Timetable for designation.* The State agency must make any initial designations or redesignation of area agencies within 150 days after the effective date of these regulations, or by September 30, 1980, whichever is later.

§ 1321.63 Types of agencies that may be an area agency.

(a) The State agency may designate as an area agency any one of the following types of agencies that has the authority and the capacity to carry out the functions of an area agency:

(1) An established office on aging which operates within the planning and service area;

(2) Any office or agency of a unit of general purpose local government that is proposed by the chief elected official of the unit;

(3) Any office or agency proposed by the chief elected officials of a combination of units of general purpose local government; or

(4) Any other public or private nonprofit agency, except any regional or local agency of the State.

(b) In designating or redesignating an area agency, the agency must give preference to:

(1) An established office on aging; or

(2) An Indian tribal organization in any planning and service area whose boundaries are essentially the same as those of an Indian reservation.

§ 1321.65 Organization of the area agency.

An area agency may be either—

(a) An agency whose single purpose is to administer programs in the field of aging; or

(b) A multipurpose agency established to administer human services in the area. A multipurpose agency may delegate all its authority under this part to a designated organizational unit in the agency.

§ 1321.67 Staffing.

Subject to merit system requirements, the area agency must give preference in hiring for full or part time positions to persons age 60 or older.

§ 1321.69 Area agency procedures.

The area agency must have written procedures for carrying out all its functions under this part that meet procedural requirements specified by the State agency.

Subpart F—Area Plan

§ 1321.71 What is an area plan.

An area plan is the document submitted by an area agency to the State agency in order to receive subgrants from the State agency's grants under this part. The area plan contains provisions required by the Act and this part and commitments that the area agency will administer activities funded under this part in accordance with all Federal requirements. The area plan also contains a detailed statement of the manner in which the area agency is developing a comprehensive and coordinated system throughout the planning and service area for all services authorized under this part. An area agency may receive subgrants under this part only under an approved area plan. An area agency may use its subgrants under this part only for activities under its approved plan.

§ 1321.73 Duration and format of the area plan and plan amendments.

(a) The area plan must be for the three year period specified by the State agency.

(b) The area agency must submit an area plan or amendment to the State agency in accordance with the uniform area plan format and other instructions issued by the State agency.

§ 1321.75 Comprehensive and coordinated service delivery system.

(a) *General rule.* The area plan must provide for the development of a comprehensive and coordinated service delivery system for all social and nutrition services needed by older persons in the planning and service area through which the area agency enters into new cooperative arrangements with other service planners and providers to—

(1) Facilitate access to and utilization of all existing services; and

(2) Develop social and nutrition services effectively and efficiently to meet the needs of older persons.

(b) *Service components of a comprehensive and coordinated service delivery system that may be funded under this part are:*

(1) Services which facilitate access, such as transportation, outreach, information and referral, escort, individual needs assessment and service management;

(2) Services provided in the community, such as congregate meals, continuing education, health, legal services, program development and coordination activities, advocacy, information and referral, individual needs assessment and service management, casework, counseling (concerning financial problems, welfare, the use of facilities and services, pre-retirement or second career), day care, protective services, health screening, services designed for the unique needs of the disabled, emergency services, including disaster relief services, residential repair and renovation, physical fitness, and recreation services, services in helping to obtain adequate housing. Alteration, renovation, acquisition and, where permitted according to the provisions of § 1321.131, construction of facilities for use as multipurpose senior centers, are community services for purposes of this part;

(3) Services provided in the home such as: home health, homemaker services, home health aide services, preinstitutional evaluation, casework, counseling, chore maintenance, visiting, shopping, readers, letter writing, and telephone reassurance; and may include home delivered meals and nutrition education; and

(4) Services provided to residents of care providing facilities, such as casework, counseling, placement and relocation assistance, group services, complaint and grievance resolution and visiting. Care providing facilities include long term care facilities, as defined in § 1321.43(b), emergency shelters, and other congregate living arrangements.

§ 1321.77 Content of the area plan.

(a) *Comprehensive and coordinated system.* An area plan must provide for the comprehensive and coordinated service delivery system specified in § 1321.75.

(b) *Area agency function requirements.* An area plan must provide that the area agency function requirements are met for:

(1) Monitoring, evaluation, and commenting on policies and programs affecting the elderly, as provided in § 1321.91(a);

(2) Arrangements with children's day care organizations as provided in § 1321.93(1);

(3) Arrangements with educational institutions, as provided in § 1321.93(m);

(4) Assessment of need for services in the planning and service area, and evaluation of effectiveness of services being provided, as provided in § 1321.93(b);

(5) Entering into subgrants or contracts for the provision of services under the plan, as provided in § 1321.93(c);

(6) Technical assistance and evaluation of all providers, as provided in § 1321.93(d);

(7) Taking into account the views of older participants, as provided in § 1321.93(i);

(8) Outreach efforts, as provided in § 1321.93(k);

(9) Designation of community focal points, as provided in § 1321.95; and

(10) Coordination with other Federal programs serving older persons, as provided in § 1321.99.

(c) *Service delivery requirements.* An area plan must provide that the service delivery requirements are met for:

(1) Preference to older persons with greatest economic or social need, as provided in § 1321.93(g);

(2) Restricting direct provision of services, as provided in § 1321.103;

(3) All service providers concerning licensure, training, outreach, coordination, preference to those with greatest economic or social need, contributions, maintenance of non-Federal support for services, and advisory role for older persons, as provided in §§ 1321.105 through 1321.115;

(4) Multipurpose senior centers activities, as provide in §§ 1321.121 through 1321.137;

(5) Nutrition services, as provided in §§ 1321.141 through 1321.147;

(6) Legal services, as provided in §§ 1321.161;

(7) Information and referral services, as provided in § 1321.171; and

(8) Transportation services, as provided in § 1321.181.

(d) *Fiscal requirements.* An area plan must provide that the requirement of § 1321.195 is met for expenditure of 50 percent of its social services allotment for priority services.

(e) *Informational requirements.* The area plan must specify:

(1) Program objectives to implement the service delivery requirements specified in paragraphs (c)(1), and (c)(4) through (c)(7) of this section, that are consistent with the requirements of this part and objectives established by the State agency;

(2) A resource allocation plan indicating the proposed use of all funds directly administered by the area agency;

(3) An inventory of programs operated by other agencies in the planning and service area for services to older persons;

(4) A description of community services areas and an identification of designated community focal points;

(5) Methods the area agency uses to set services priorities under the plan, particularly those services specified in § 1321.195; and

(6) Proposed methods for giving preference to those with greatest economic or social need in the provision of services under the plan. These methods—

(i) Must include, but are not limited to, consideration of older persons with

greatest economic need in the designation of community service areas and community focal points, as provided in § 1321.95; and

(ii) May not include use of a means test. A means test is the use of an older person's income or resources to deny or limit that person's receipt of services under this part.

§ 1321.79 Amendments to the area plan.

The area agency must amend the plan if:

(a) A new or amended State or Federal statute or regulation requires a new provision, or conflicts with any existing plan provision;

(b) A U.S. Supreme Court decision changes the interpretation of a statute or regulation;

(c) Local law, organization, policy, or agency operation changes and is no longer accurately reflected in the area plan;

(d) The area agency proposes to add, change, or delete any area plan provision; or

(e) The State agency requires further annual amendments.

§ 1321.81 Development and review of the area plan and plan amendments.

(a) *Public hearing.*

(1) The area agency must hold at least one public hearing on the area plan and on all amendments to the area plan.

(2) The area agency must give adequate notice to older persons, public officials, and other interested parties of the times, dates, and locations of the public hearing(s).

(3) The area agency must hold the public hearing(s) at a time and location which permit older persons, public officials, and other interested parties reasonable opportunity to participate.

(b) *Review and comments by advisory council and A–95 clearinghouse.* The area agency must submit the area plan and amendments for review and comment, first to the area advisory council and then to the State A–95 clearinghouse.

(c) *State agency approval.* The area agency must submit the area plan or amendments to the State agency for approval, following procedures specified by the State agency.

§ 1321.83 Approval or disapproval of an area plan and plan amendments.

(a) The State agency must approve an area plan or amendment which meets the requirements of this part.

(b) If the State finds that a plan is unapprovable, or if the State agency proposes to terminate the designation of an area agency, or to find that the provisions or administration of an approved area plan no longer substantially comply with the requirements of this part, the State agency must follow the procedures specified in § 1321.51 to terminate the plan or the agency designation.

§ 1321.85 Termination of funds and continuity of services.

(a) The State agency must withhold further payments to an area agency whenever the State agency, after reasonable notice and opportunity for a hearing, as provided in § 1321.51, finds that—

(1) The area agency does not meet the requirements of this part,

(2) The plan or plan amendment is not approvable; or

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of this part.

(b) If the State agency terminates funds under paragraph (a) of this section, it must notify the Commissioner in writing of its action; provide a plan for the continuity of services in the affected planning and service area, and designate a new area agency in the planning and service area in a timely manner.

(c) If necessary to ensure continuity of services in a planning and service area, the State agency may, for a period of up to 180 days after its final decision to withdraw designation of an area agency—

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and service area.

Subpart G—Area Agency Responsibilities

§ 1321.91 Advocacy responsibilities of the area agency.

The area agency must—

(a) Monitor, evaluate, and comment on all policies, programs, hearings, levies, and community actions which affect older persons;

(b) Conduct public hearings on the needs of older persons;

(c) Represent the interests of older persons to public officials, public and private agencies or organizations;

(d) Coordinate activities in support of the statewide long-term care ombudsman program; and

(e) Coordinate planning with other agencies and organizations to promote new or expanded benefits and opportunities for older persons.

§ 1321.93 Area agency general planning and management responsibilities.

The area agency must:

(a) Develop and administer an area plan for a comprehensive and coordinated service delivery system in the planning and service area, in compliance with all applicable laws and regulations, including all requirements of this part;

(b) Assess the kinds and levels of services needed by older persons in the planning and service area, and the effectiveness of other public or private programs serving those needs;

(c) Except as provided in § 1321.103, enter into subgrants or contracts to provide all services under the plan;

(d) Provide technical assistance, monitor, and periodically evaluate the performance of all service providers under the plan;

(e) Coordinate the administration of its plan with the Federal programs specified in § 1321.99, and with other Federal, State and local resources in order to develop the comprehensive and coordinated service system required by § 1321.75;

(f) Establish an advisory council as required by § 1321.97;

(g) Give preference in the delivery of services under the area plan to older persons with the greatest economic or social need;

(h) Assure that older persons in the planning and service area have reasonably convenient access to information and referral services;

(i) Provide adequate and effective opportunities for older persons to express their views to the area agency on policy development and program implementation under the plan;

(j) Divide the entire planning and service area into community service areas and designate community focal points, as required by § 1321.95;

(k) Have outreach efforts, with special emphasis on the rural elderly, to identify older individuals with greatest economic or social needs and inform them of the availability of services under the plan;

(l) If possible, have arrangements with children's day care organizations under which older persons can volunteer to help provide the day care;

(m) If possible, have arrangements with local educational agencies, institutions of higher education, and nonprofit private organizations, to use the services provided older individuals under the community schools program of the Elementary and Secondary Education Act of 1965.

(n) Develop and publish the methods that the agency uses to establish priorities for services, particularly those specified in § 1321.195.

§ 1321.95 Designation of community focal points.

(a) *Purpose.* The area agency, where feasible, must designate one community

focal point in each community service area to provide a place for ready access to services furnished under the plan.

(b) *Procedures for designating community focal point.* The area agency must use the following procedures in designating community focal points.

(1) In order to decide in which communities to designate a focal point, the area agency must divide the entire planning and service area into community service areas, after considering:

(i) The incidence of older persons with the greatest economic need;

(ii) The delivery pattern of services funded under this part;

(iii) The delivery pattern of services funded from other sources;

(iv) The geographic boundaries of communities and natural neighborhoods; and

(v) The location of agencies or organizations with the capacity and willingness to carry out the functions of a community focal point.

(2) The area agency may designate as a community focal point only an organization that is able and willing to make some provision for:

(i) Individual needs assessment;

(ii) Information and referral;

(iii) Access to emergency services, twenty-four hours a day, seven days a week; and

(iv) Collocation of services.

(3) The area agency must give special consideration in designating community focal points to multipurpose senior centers; and

(4) If the area agency decides it is not feasible to designate a focal point in any community service area, it must keep a written record of the basis for its decision.

§ 1321.97 Area agency advisory council.

(a) *Functions of council.* The area agency must establish an advisory council in accordance with paragraphs (b) through (d) of this section to advise the agency to:

(1) Develop and administer the area plan;

(2) Conduct public hearings;

(3) Represent the interests of older persons; and

(4) Review and comment on all community policies, programs and actions which affect older persons.

(b) *Composition of the council.* The advisory council must be made up of:

(1) More than 50 percent older persons;

(2) Representatives of older persons;

(3) Local elected officials; and

(4) The general public.

(c) The agency may use the advisory council to assist it in carrying out any of its functions.

(d) The area agency must provide staff and assistance to the advisory council.

§ 1321.99 Coordination with other programs.

In carrying out its responsibilities for the development of a comprehensive and coordinated system, the area agency must establish effective and efficient procedures for coordinating programs funded under this part with the following programs:

(1) Health systems agencies designated under Title XV of the Public Health Services Act;

(2) The Comprehensive Employment and Training Act of 1973;

(3) Title II of the Domestic Volunteer Act of 1973;

(4) Titles II, XVI, XVIII, XIX, and XX of the Social Security Act;

(5) Sections 231 and 232 of the National Housing Act;

(6) The United States Housing Act of 1937;

(7) Section 202 of the Housing Act of 1959;

(8) Title I of the Housing and Community Development Act of 1974;

(9) Section 222(a)(8) of the Economic Opportunity Act of 1964;

(10) The community schools program under the Elementary and Secondary Education Act of 1964; and

(11) Sections 3, 5, 9 and 16 of the Urban Mass Transportation Act of 1964.

Subpart H—Service Requirements

General Requirements Applicable to All Services

§ 1321.101 State agency approval of area agency subgrants or contracts.

(a) The State agency may not require the area agency to submit for prior review or approval any proposed subgrants or contracts with public or private nonprofit agencies or organizations.

(b) The area agency must submit to the State agency for prior approval any proposed contracts with profit making organizations for services under the area plan. The State agency may approve the contracts only if the area agency demonstrates that the profit making organization would provide services in a manner clearly superior to other available public or private nonprofit providers.

§ 1321.103 Direct provision of services by State and area agencies.

(a) *General rule.* A State or area agency must use subgrants or contracts with service providers to provide all services under this part unless the State agency decides that direct provision of a service by the State or area agency is necessary to assure an adequate supply of the service. A State agency may only provide direct services when the State has been designated as a single planning and service area, as provided in § 1321.59.

(b) *Test for adequate supply for services related to area agency statutory functions.*

(1) For any of the services directly related to an area agency's statutory functions, direct provision is necessary to assure an adequate supply if the State agency decides that the area agency (or the State agency in a single planning and service area State) can perform the services more effectively and efficiently than any other agency.

(2) Services directly related to the statutory advocacy and service delivery functions of the area agency are those which must be performed in a consistent manner throughout the agency's jurisdiction. These services are: information and referral, outreach, advocacy, program development, coordination, individual needs assessment and case management.

(c) *Test for adequate supply for other services.*

(1) For any other service funded under this part, direct provision is necessary to assure an adequate supply if:

(i) The area agency was providing the service before the agency's initial designation after the effective date of these regulations and requiring it to stop providing the service would result in a disruption of the service; or

(ii) No other agency can and will effectively provide the service.

(2) These services include all other services funded under the area plan, such as nutrition, homemaker, transportation, and legal services. They do not include any ombudsman services provided by the State agency under § 1321.43.

(d) *Services not under this part.* The area agency may plan, coordinate, and provide services funded under other programs, if it does not use funds under this part for those services; and if it continues to meet all its area agency responsibilities.

§ 1321.105 Licensure requirement.

All services provided under this part must meet any existing State and local licensure requirements for the provision of those services.

§ 1321.107 Training, outreach, and coordination.

All service providers under this part must have procedures for:

(a) Outreach activities to ensure

participation of eligible older persons;

(b) Training and use of elderly volunteers and paid personnel; and

(c) Coordination with other service providers in the planning and service area.

§ 1321.109 Preference for those with greatest economic or social need.

All service providers under this part must give preference to those with greatest economic or social need. Service providers may use methods such as location of services and specialization in the types of services most needed by these groups to meet this requirement. No service provider may use a means test.

§ 1321.111 Contributions for services under the area plan.

(a) *Opportunityy to contribute.* Each service provider under the area plan must—

(1) Give each older person who receives a service information about the cost of the service;

(2) Give each older person an opportunity to contribute to part or all of the cost of the service;

(3) Tell each older person that he or she may decide freely whether or not to contribute and how much;

(4) Avoid the appearance of pressure to contribute;

(5) Protect the privacy of each older person with respect to his or her contribution;

(6) Have appropriate procedures to safeguard and account for all contributions; and

(7) Use all contributions to expand the services of the provider under this part. Nutrition services providers must use all contributions to increase the number of meals served.

(b) *Contribution schedules.* The area agency must permit each service provider to develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule the provider must consider the income ranges of older persons in the community and the provider's other sources of income.

(c) *Failure to contribute.* The area agency may not allow any service provider to deny an older person a service because the older person would not contribute for the service.

§ 1321.113 Maintenance of non-Federal support for services.

Each service provider under the area plan must—

(a) Assure that funds under this part are not used to replace funds from non-Federal organizational sources; and

(b) Agree to continue or initiate efforts to obtain private and other public organizational support for services funded under this part.

§ 1321.115 Advisory role to service providers of older persons.

Each service provider under the area plan must have procedures for obtaining the views of participants on the services they receive.

Multipurpose Senior Centers

§ 1321.121 Multipurpose senior centers.

(a) *Purpose of making awards.* The area agency may award social service funds under this part for the following senior center activities:

(1) Alteration, leasing for at least 10 years, or renovation of a facility including a mobile facility, for use as a senior center;

(2) Subject to the provisions of § 1321.131, the acquisition or construction of a facility including a mobile facility for use as a senior center; or

(3) The costs of professional and technical personnel required for the operation of multipurpose senior centers.

(b) *Definitions.* For purposes of this subpart,

(1) "Acquiring" means purchasing or obtaining ownership of an existing facility for use as a senior center.

(2) "Altering" or "renovating" means making modifications to an existing facility which are necessary for its effective use as a senior center. This includes restoration, repair, expansion which is not more than twice the square footage of the original facility, and all related physical improvements.

(3) "Construction" means the building of a new facility, including the costs of land acquisition and architectural and engineering fees.

(4) "Structural change" means any change to the load bearing members of a building.

(c) *General requirements for senior center awards.*

(1) *Type of agency.* The area agency may award multipurpose senior center funds to either a public or private nonprofit agency or organization.

(2) *Minimum service requirements for funding.* Funds may be awarded for the purposes specified in paragraph (a) of this section only for a senior center which—

(i) Serves a cross section of all segments of the older population of its service area, with special emphasis on those in greatest economic or social need;

(ii) Operates a program of group activities, individual services and community service opportunities in each of the following categories of service: (a) access service; (b) community services; (c) in-home services; and (d) services in care providing facilities;

(iii) Provides for necessary cordination with other services and programs in the service area, by collocating staff and services of other programs at the senior center or referring individuals needing services to other service providers: and

(iv) Operates its service program from a safe and physically accessible structure. Access to the service program must be available to older persons at least 45 hours per week, except that the State agency may set shorter access hours for centers in rural areas.

(3) *Preference for community focal points.* The area agency must give preference in making awards to agencies or organizations which have been or will be designated as community focal points in communities and neighborhoods with the greatest social or economic needs.

§ 1321.123 Compliance with health, safety, and construction requirements.

(a) *General.* A recipient of any award for senior center activities must comply with all applicable State and local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(b) *Life Safety.* A recipient of any multipurpose senior center award must:

(1) Comply with the provisions of the National Fire Protection Association 101 Life Safety Code, applicable building occupancy classification, or State or local codes, whichever is most stringent;

(i) These regulations incorporate by reference the "Life Safety Code." (NFPA No. 101, 1976 edition). This code is available from the National Fire Protection Association, 470 Atlantic Avenue, Boston, Ma. 02210 at a cost of $5.00 per copy.

(ii) A copy of the "Life Safety Code" is available for inspection at the Administration on Aging, Public Inquiries, Room 4146, 330 Independence Avenue, S.W., Washington, D.C. 20201, and at the Office of the Federal Register library, Room 8401, 1100 L Street N.W., Washington, D.C. 20408.

(2) Install an adequate number of smoke detectors in the senior center; and

(3) Have a plan for assuring the safety of older persons in a natural disaster or other safety threatening situation.

(b) *Architectural Barriers.* A recipient of an award for construction of a senior center must assure that plans and specifications for the facility comply with regulations relating to minimum standards of construction, particularly with the requirements of the Architectural Barriers Act of 1968.

(c) *HUD Consultation.* The State agency must assure that it will consult with the Secretary of Housing and Urban Development with respect to the technical adequacy of any proposed alteration or renovation of a senior center assisted under this part.

§ 1321.125 Compliance with Federal labor standards.

A recipient of an award for alteration, renovation, or construction of a facility for use as a multipurpose senior center must comply with the requirements of the Davis-Bacon Act and other mandatory Federal labor standards.

§ 1321.129 Length of use of an acquired or constructed facility.

(a) A recipient of an award for the acquisition of a facility to be used as a senior center must assure that the facility will be used for that purpose for at least ten years from the date of acquisition.

(b) A recipient of an award for the construction of a facility to be used as a senior center must assure the facility will be used for that purpose for at least twenty years after completion of construction.

(c) The Commissioner may waive the requirements specified in paragraphs (a) and (b) of this section in unusual circumstances.

§ 1321.131 Special conditions for approval of an award for acquisition or construction.

(a) The area agency must obtain the approval of the State agency before making an award for the construction of a facility.

(b) The State agency may approve the construction of the facility after considering the views of the area agency if it finds that there are no other suitable facilities available to serve as a focal point in the community.

(c) The area agency may make an award for the aquisition of a facility if there are no suitable facilities for leasing.

§ 1321.133 Compliance with prohibition on sectarian use of a facility.

A recipient of an award for acquistion or construction of a facility must assure that the facility will not be used for sectarian instruction or religious worship.

§ 1321.135 Funding and use requirements.

A recipient of an award for alteration, renovation, acquisition or construction of a facility must assure that:

(a) Sufficient funds will be available to meet the non-Federal share of the award;

(b) Sufficient funds will be available to effectively use the facility as a multipurpose senior center; and

(c) In a facility that is shared with other age groups, funds received under this part support only—

(1) That part of the facility used by older persons; or

(2) A proportionate share of the costs based on the extent of use of the facility by older persons.

§ 1321.137 Recapture of payments for acquired or constructed facilities

(a) The United States government is entitled to recapture a portion of Federal funds from the owner of a facility if within 10 years after acquisition or 20 years after completion of construction—(1) The owner of the facility ceases to be a public or non-profit agency; or

(2) The facility is no longer used for senior center activities.

(b) The amount recovered under paragraph (a) of this section is that proportion of the current value of the facility equal to the proportion of Federal funds contributed to the original cost. The current value of the facility is determined by an agreement between the owner of the facility and the Federal government; or by an action in the Federal district court in which the facility is located.

Nutrition Services

§ 1321.141 Nutrition services.

(a) *Purpose of making awards.* Except as provided in § 1321.101(b), the area agency may award nutrition services funds received under this part to a public or private non-profit agency or organization to provide meals and other nutrition services, including nutrition education, to older persons.

(b) *Selection of nutrition services providers.*

(1) The area agency may award nutrition services funds only to a nutrition services provider that—(i) Provides congregate nutrition services and, depending on an assessment of need by the area agency or the provider, provides home delivered nutrition services either by contract or directly;

(ii) If it is not the designated community focal point, agrees to coordinate its activities with, and provide some meals at the focal point; and

(iii) Meets the requirements specified in §§ 1321.143 through 1321.147.

(2) The area agency must award funds to a nutrition services provider that:

(i) Was a nutrition project receiving funds under the former Title VII of the Act on September 30, 1978. For purposes of this requirement, "nutrition project" means the recipient of a subgrant or contract to provide nutrition services, other than the area agency, which met the requirements for a project specified in the former Title VII regulations.

(ii) Meets the requirements of this subpart; and

(iii) Has carried out its nutrition services activities with demonstrated effectiveness.

(3) Except as provided in 45 CFR part 74, Subpart M, the area agency may not discontinue funding a nutrition project unless the State agency—(i) Has given the project an opportunity for a hearing, in accordance with § 1321.51, if a hearing is requested by the project director; and

(ii) Has determined that the project:

(A) Does not meet the requirements of this subpart; or

(B) Has not carried out nutrition services activities with demonstrated effectiveness. The State agency may not set criteria for demonstrated effectiveness that are different from the requirements imposed on projects during the period for which their performance is being measured.

§ 1321.143 Food requirements for all nutrition services providers.

(a) In purchasing and preparing food, and delivering meals, the nutrition services provider must follow appropriate procedures to preserve nutritional value and food safety;

(b) The nutrition services provider must serve special meals to meet the particular health, religious, or ethnic dietary needs of individual participants even when special diets are more expensive than other meals. The area agency may exempt a nutrition service provider from this requirement only when the food or skills necessary to prepare the special diets are unavailable in the planning and service area.

(c) The nutrition services provider must use appropriate food containers and utensils for blind and handicapped participants.

(d) Each meal served by the nutrition services provider must contain at least one-third of the current Recommended Dietary Allowances as established by the Food and Nutrition Board of the National Academy of Sciences—National Research Council.

(e) U.S.D.A. food assistance programs.

(1) Direct assistance for nutrition services.

(i) The State agency must have an agreement with the U.S.D.A. State Distributing Agency to assure the availability to nutrition services providers under this part of food, cash, or a combination of food and cash.

(ii) The State agency must distribute all food, cash or the combination of food and cash received from U.S.D.A. through area agencies to nutrition services providers based on each provider's proportion of the total number of meals served in the State.

(iii) The State agency must comply with the requirements of 7 CFR Part 250 for participation in the U.S.D.A. program.

(iv) A nutrition services provider must accept and use any U.S.D.A. food made available by the State agency, and must assure appropriate and cost effective arrangements for the transportation, storage and use of the food.

(iv) If a nutrition service provider receives cash instead of food, the provider must spend the cash only for buying United States agricultural commodities and other food.

(2) Food stamp program. (i) The nutrition services provider must assist participants in taking advantage of benefits available to them under the food stamp program.

(ii) The nutrition services provider must coordinate its activities with agencies responsible for administering the food stamp program to facilitate participation of eligible older persons in the program.

§ 1321.145 Special requirements: congregate nutrition services.

(a) *Eligibility.* A person aged 60 or older, and the spouse of the person regardless of age, are eligible to participate in congregate nutrition services under this part.

(b) *Type and frequency of meals served.* The nutrition services provider must provide a hot or other appropriate meal in a congregate setting at least once a day, five or more days a week.

(c) *Location of congregate nutrition services.* The nutrition services provider must (i) locate congregate nutrition services as close as possible, preferably within walking distance, to the majority of eligible older persons, and (ii) give preference to community facilities.

§ 1321.147 Special requirements: home delivered nutrition services.

(a) *Eligibility.* A person aged 60 or over, and the spouse of the person regardless of age or condition, are eligible to receive home delivered meals if one or the other is homebound by reason of illness, incapacitating disability or is otherwise isolated.

(b) *Determnination of need for home delivered nutrition services.*

(1) The nutrition services provider must conduct initial and subsequent periodic assessments of the eligible individual's need for home delivered meals, unless the assessment is otherwise provided for by the area agency.

(2) If feasible the nutrition services provider must promptly meet an eligible individual's request for home delivered meals, and must continue to provide home delivered meals as long as the older person needs them.

(3) If the older person consents, the nutrition services provider must bring to the attention of the area agency any condition or circumstances which place the older person or the household in jeopardy.

(c) *Criteria for selecting providers of home delivered nutrition services.* (1) The area agency may only award funds for home delivered meals to a service provider that also provides congregate meals.

(2) The nutrition services provider must purchase home delivered meals from an organization, where one exists, that (i) Demonstrates proven ability to provide home delivered meals effectively and at reasonable costs;

(ii) Agrees to comply with regulations under this part when providing meals funded under this part; and

(iii) Has the capacity to deliver meals during a weather related emergency.

(2) Only when there is no existing organization which meets the criteria specified in paragraph (1) of this section may the nutrition services provider furnish home delivered meals directly.

(d) *Type and frequency of meals served.* The provider of home delivered meals must assure the availability to participants of at least one meal a day, seven days a week. Meals may be hot, cold, frozen, dried, canned, or supplemental foods with a satisfactory storage life.

Legal Services

§ 1361.161 Legal services.

(a) *Purpose of the award.* The area agency may award social service funds under this part for legal services. These legal services must be in addition to any legal services already being provided to older persons in the planning and service area.

(b) *Definition.* Legal services means legal advice and representation to those with economic or social needs, provided by a lawyer or non-lawyer where permitted by law. Legal services may also include counseling and other appropriate assistance by a paralegal or law student under the supervision of a lawyer.

(c) *Conditions legal service providers must meet.*

(1) A legal service provider must be either—(i) An organization that receives funds under the Legal Services Corporation Act; or

(ii) An organization that has a program or the capacity to develop a legal services program.

(2) Each legal service provider must—(i) Make efforts to involve the private bar in legal services provided under this part, including groups within the private bar that furnish legal services to older persons on a pro bono and reduced fee basis;

(ii) Ensure that no attorney of the provider engages in any outside practice of law if the director of the provider has determined that such practice is inconsistent with the attorney's full time responsibilities;

(iii) Ensure that while employed under this part, no employee and no staff attorney of the provider shall, at any time,

(A) Use official authority or influence for the purpose of interfering with or affecting the results of an election or nomination for office, whether partisan or nonpartisan;

(B) Directly or indirectly coerce, attempt to coerce, command or advise an employee of any provider to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; or

(C) Be a candidate for partisan elective public office.

(iv) In areas where a significant number of clients speak a language other than English as their principal language, adopt employment policies that ensure that legal assistance will be provided in the language spoken by those clients; and

(v) Adopt a procedure for affording the public appropriate access to the Act, regulations and guidelines under this part, the provider's written policies, procedures, and guidelines, the names and addresses of the members of its governing body, and other materials that the provider determines should be disclosed. The procedure adopted must be subject to approval by the area agency.

(3) Each legal services provider that is not a Legal Services Corporation grantee must agree to coordinate its services with Legal Services Corporation grantees in order to concentrate legal services funded under this part on older persons with the greatest economic or social need who are not eligible for services under the Legal Services Corporation Act. In carrying out this requirement, legal services providers may not use means testing or require

older persons initially to apply for services through a Legal Services Corporation grantee.

(4) Each legal services provider to which the area agency awards funds must meet the requirements of § 1321.105 through § 1321.115 more fully than other applicants.

Information and referral services

§ 1321.171 Information and Referral Services.

(a) The area plan must provide for information and referral services sufficient to assure that older persons within the planning and service area have reasonably convenient access to the service. In areas in which a significant number of older persons speak a language other than English as their principal language, reasonably convenient access includes the provision of information and referral services in the language spoken by the older persons.

(b) "Information and referral service" means a location at which the service provider:

(1) Develops and maintains information about services and opportunities available to older persons;

(2) Has a trained paid and volunteer staff to inform older persons about those opportunities and services and help older persons take advantage of them; and

(3) Maintains current records of older persons needing or requesting services. These records may be maintained and disclosed by name with the consent of the older person or a family member.

(c) The State plan must provide for information and referral services for all older persons not furnished the service under paragraph (a) of this section.

Transportation Services

§ 1321.181 Transportation agreements.

(a) The area agency or the State agency in a single planning and service area State may enter into transportation agreements with agencies which administer programs under the Rehabilitation Act of 1973 and titles XIX and XX of the Social Security Act to meet the common need for transportation of service participants under the separate programs.

(b) The area agency may pool social service funds received under this part with funds available to other parties to the agreement to share expenses related to a common transportation service.

Subpart I—Fiscal Requirements

§ 1321.191 Allotments and grants to States.

(a) *General rule.* The Commissioner makes annual allotments to each State for paying part of the costs of administration and services under the State plan.

(b) *Types of allotments.* Each State receives separate allotments for—(1) State agency administration;

(2) Social services including senior center services;

(3) Congregate nutrition services; and

(4) Home delivered nutrition services.

(c) *Amounts allotted for social and nutrition services.* From the sums appropriated each fiscal year for social and nutrition services, each State is allotted an amount based on the ratio of its population aged 60 and older to the national population aged 60 and older except that—(1) Each State is allotted at least one-half of one percent;

(2) Guam, the Virgin Islands, and the Trust Territory of the Pacific Islands are each allotted one-fourth of one percent;

(3) American Samoa and the Northern Mariana Islands are each allotted one-sixteenth of one percent; and

(4) No State is allotted less than the State received for Fiscal Year 1978.

(d) *Amounts allotted for State administration.* From the sums appropriated each fiscal year for State agency administration, each State is allotted an amount based on the ratio of its population aged 60 or over to the national population age 60 and older, except that—

(1) Each State is allotted at least one-half of one percent of the sum appropriated, or $300,000, whichever is greater.

(2) Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands and the Northern Mariana Islands are each allotted at least one-fourth of one percent or $75,000, whichever is greater.

(e) *Grants.* The Commissioner makes grants to States from their allotments.

(f) *Limitation on use.* (1) Except as provided in §§ 1321.199, § 1321.203, § 1321.205, and paragraph (f)(2) of this section, a State must use each allotment for the purpose for which it was made.

(2) A State may use not more than 20 percent of its fiscal year 1979 and 1980 nutrition allotments for social services directly related to the delivery of nutrition services. The Commissioner may approve the use of up to 50 percent in a State with unusually high supportive costs.

(g) *Limitation on meaning of "State".* For purpose of paragraphs (c)(1) and (d)(1) of this section, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands and the Trust Territory of the Pacific Islands.

Service Funding Requirements

§ 1321.192 Area agency allotments.

(a) *General rule.* Except as provided in §§ 1321.59, 1321.197, and 1321.203, a State agency must reallot its entire social and nutrition services allotments to area agencies under approved area plans. The area agency must use each allotment for the purpose for which it was made.

§ 1321.193 Expenditures in rural areas.

(a) *General rule.* The State agency must spend in each fiscal year for services to older persons in rural areas under this part at least 105 percent of the amount spent under the Act in rural areas during Fiscal Year 1978 for social and nutrition services and multipurpose senior centers.

(b) *Definition of rural area.* For purposes of this section, "rural area" means—

Option 1: A planning and service area that meets at least two of the following criteria:

(1) Less than 50 percent of the total population lives in an urban area as defined in the most recent census by the Bureau of the Census.

(2) The total population density of each county, according to the State's most recent population data, is less than 100 persons per square mile of land area. (In States where planning and service area boundaries are not the same as county boundaries, the portion of each county within a planning and service area is treated as a separate county.)

(3) In a multi-county planning and service area no more than two urban places or minor civil divisions, such as a township or district, have a total population that exceeds 20,000 persons. In a single county planning and service area, no more than one urban place or minor civil division has a total population that exceeds 20,000 persons; or

Option 2: A county that meets at least two of the following criteria:

(1) Less than 50 percent of the total population lives in an urban area as defined in the most recent census by the Bureau of the Census.

(2) The total population density of the county according to the State's most recent population data is less than 100 persons per square mile of land area.

(3) The county area includes no more than one urban place or minor civil

division with a total population that exceeds 20,000 persons; or

Option 3: Geographic areas of a State defined by the State agency as rural according to criteria established by the State agency and approved in the State plan.

(c) *Waiver.* The Commissioner, in approving a State plan, or plan amendment may waive the requirement of paragraph (a) of this section if the State agency demonstrates that—(1) The service needs of older persons in rural areas are being met; or

(2) The number of older individuals residing in rural areas is not sufficient to require the State agency to comply with the requirement of paragraph (a) of this section.

§ 1321.195 Fifty percent priority service requirement.

(a) *General rule.* An area agency must spend at least 50 percent of its social services allotment, excluding amounts used for administration under § 1321.201(c) for the following categories of services, with at least some funds spent in each category:

(1) Services associated with access to other services: transportation, outreach, and information and referral;

(2) In-home services: homemaker and home health aide, visiting and telephone reassurance, and chore maintenance; and

(3) Legal services.

(b) *Waiver.* The State agency, in approving the area plan or a plan amendment, may waive the requirement of paragraph (a) of this section for any category of service for which the area agency demonstrates to the State agency that the services provided from other sources meet the needs of older persons in the planning and service area for that category of service.

(c) *Revised priority expenditures.* If the area agency receives a waiver for any category of service, it must continue to spend for the remaining categories of services a percentage of the area agency's social service funds agreed on by the State and area agency.

§ 1321.197 Long-term care ombudsman program.

(a) The State agency must use annually at least 1 percent of the State's allotment for social services or $20,000, whichever is greater, to operate the long-term care ombudsman program required under § 1321.43.

(b) The requirement of this section does not apply in any fiscal year in which the State spends from State or local funds an amount equal to the amount required in paragraph (a) of this section.

(c) American Samoa, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands are not subject to the requirement of paragraph (a) of this section.

§ 1321.199 Transfer between congregate and home-delivered nutrition service funds under the State plan.

(a) A State agency may transfer 15 percent or less of the State's separate allotments for congregate and home delivered meals from one allotment to the other without the approval of the Commissioner.

(b) A State agency may apply to the Commissioner to transfer more than 15 percent of the State's separate allotments for a fiscal year for congregate and home-delivered nutrition services from one allotment to the other. The State agency must—(1) Specify the percent and the projected amount which the State agency proposed to transfer from one allotment to the other; and

(2) Specify whether the proposed transfer is for the entire period of the State plan or a portion of the three year period.

(c) The Commissioner approves the State agency's request by approving the State plan or plan amendment. The Commissioner does not deny the transfer unless the Commissioner decides that the transfer is not consistent with the purposes of this part.

§ 1321.201 Allowable use of funds for State and area plan administration.

(a) *State plan administration.* (1) Except as provided in § 1321.205(b)(3), the State agency must use its allotment for State plan administration only to carry out the State agency responsibilities specified in subparts B and D.

(2) The State agency may use any part of its State plan administration allotment which it determines is not needed for that purpose to pay part of the cost of the administration of area plans.

(3) The State agency in a State which is a single planning and service area may use not more than 8.5 percent of its allotments for social and nutrition services for State plan administration instead of the State's allotment for State plan administration. The State agency may not use both allotments for this purpose.

(b) *Cost of Developing State Plan.* The Commissioner may pay to a State without an approved State plan any part of its allotment for State plan administration for the purpose of developing an approvable State plan.

(c) *Area plan administration.* The State agency may use not more than 8.5 percent of each of its total allotments for social and nutrition services for area plan administration.

§ 1321.203 Additional funds for State plan administration.

(a) *General rule.* If the State agency needs additional funds for State plan administration, the State agency may apply to the Commissioner for permission to use not more than three-forths of 1 percent of the total amount allotted to it for social and nutrition services.

(b) *Application procedures.* The State agency must submit an application for additional administrative funds in accordance with procedures specified by the Commissioner. The application must demonstrate that:

(1) The State agency needs the additional amount requested to fully and effectively administer its State plan;

(2) The State agency makes full and effective use of its State administration allotment and of the personnel of the State and area agencies; and

(3) The State and area agencies are carrying out, on a full time basis, programs and activities which support the purposes of this part.

(c) *Approval.* The Commissioner approves any application that meets the requirements specified in paragraph (b) of this section.

(d) *Restriction on employee salaries.* A State agency must assure that no funds approved under paragraph (c) of this section will be used to fund a vacancy created by terminating an employee funded from other sources.

§ 1321.205 Obligation and reallotment.

(a) *General rule.* Except as provided in paragraph (b) of this section, the State agency must obligate any funds received under this part during the fiscal year in which they were allotted.

(b) *Reallotment.* (1) If the Commissioner decides that a State will not use any amount allotted under this part for the purpose for which the allotment was made, the Commissioner reallots the unused funds to one or more other States according to their needs. The State agency receiving these realloted funds must obligate them by the end of the fiscal year following the one in which they were reallotted.

(2) If an Indian tribal organization in a State receives a grant under Title VI of the Act, the Commissioner withholds a portion of the State's allotments for administration, social, and nutrition

services. The amount the Commissioner withholds is based on the number of older Indians who are counted both for purposes of the State's allotment under this part and the grant under Title VI. The Commissioner reallots the withheld amount in accordance with paragraph (b)(1) of this section.

(3) If the Commissioner decides that a State does not need for State plan administration any portion of the State's allotment for State plan administration the State agency may use the amount for social or nutrition services.

§ 1321.207 Federal financial participation.

(a) *State plan administration.* A State agency may use its allotment for State plan administration to pay not more than 75 percent of the costs of administering the State plan.

(b) *Area plan administration.* A State agency may use up to 8.5 percent of each of its allotments for social and nutrition services to pay not more than 75 percent of the costs of administering area plans.

(c) *Social and nutrition services.* (1) In Fiscal Years 1979 and 1980, a State agency may use its allotments for social and nutritional services to pay not more than 90 percent of the costs of these activities.

(2) After Fiscal Year 1980, a State agency may use its allotments for social and nutrition services to pay not more than 85 percent of the costs of these activities.

§ 1321.209 Non-Federal share requirements.

The non-Federal share may be met either by allowable cost or third-party in-kind contributions, except that—(a) At least 25 percent of the non-Federal share in each fiscal year must be provided by State or local public sources; and

(b) The 5 percent increased non-Federal share required by § 1321.207(c)(2) may be provided only by the State.

§ 1321.211 State agency maintenance of effort.

Each fiscal year the State agency must spend under the State plan at least the same amount of State funds it spent under the plan in the previous fiscal year. If the State agency spends less than this amount, the Commissioner reduces the State's allotments under this part by a percentage equal to the percentage by which the State reduced its expenditures.

Federal Reviews and Audits in General

§ 1321.213 Federal reviews and audits.

A Federal review or audit is performed to determine if a State plan is still approvable, and if the State agency operations and expenditures are proper under Federal requirements, and the approved State plan. A review or audit may cover any aspect of the Title III program and may be performed by HEW, General Accounting Office, or by another authorized agency.

§ 1321.215 Types and effects of reviews and audits.

(a) *Types.* The types of Federal reviews and audits most often conducted are:

(1) Program and financial reviews described in § 1321.217; and

(2) HEW Audit Agency audits, described in §§ 1321.221 and 1321.223.

(b) *Effects.* Any review or audit may lead to a disallowance, formal compliance action, recommendations on how a State agency may improve the administration of its program, or offers of technical assistance.

Program and Financial Reviews

§ 1321.217 Program and financial reviews in general.

(a) *Responsibility for review.* The Regional Aging Program Director conducts program and financial reviews when he or she considers them appropriate. When conducting a review, the Regional Aging Program Director uses any procedures (including onsite review) or specialized assistance needed.

(b) *Review findings.* The Regional Aging Program Director makes all review findings available in writing to the State agency so that it can correct any unacceptable policy or practice. If a review results in disallowance of a cost, the Commissioner will reduce the State's allotment by the amount disallowed.

§ 1321.219 Issues of compliance or conformity after review.

(a) *Regional Aging Program Director tries to resolve.* A compliance issue may arise if the State fails to substantially carry out what is required by Federal requirements and pertinent court decisions and contained in the approved State plan. A compliance issue arises if a previously approved plan provision no longer meets Federal requirements or was approved in error. If the Regional Aging Program Director believes there is a compliance issue, he or she tries to obtain needed changes in the agency's operating practice or the State plan, through negotiation with the State.

(b) *Issues not resolved.* If the State agency does not make the changes necessary to bring about compliance, the Regional Aging Program Director, with concurrence of the Commissioner, will notify the agency in writing that there is an issue of compliance and advise it of its opportunity for a hearing under Subpart J.

HEW Audit Agency Reviews and Audits

§ 1321.221 Audit Agency reports.

After an audit or review, the Audit Agency releases its final report. The report contains the Audit Agency's findings and recommendations on the practices reviewed and the allowability of expenditures audited.

§ 1321.223 Action after Audit Agency reports.

If the Audit Agency questions an expenditure, the Commissioner may disallow the expenditure and reduce the State's allotment by the amount disallowed. If the Audit Agency finds a compliance issue, the Commissioner, after discussions with the State agency, decides whether to take compliance action and notifies the State agency accordingly.

Subpart J—Hearing Procedures for State Agencies

General Provisions

§ 1321.231 Scope.

(a) *General procedures.* Hearing procedures described in this subpart apply to notice and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment;

(2) Determination that a State agency does not meet the requirements of this part;

(3) Determination that there is a failure in the provisions on the administration of an approved plan to substantially comply with Federal requirements.

(b) *Negotiations.* Nothing in this subpart limits negotiations between the Department and the State. Negotiations on hearing issues are not part of the hearing and are not subject to the rules in this subpart unless there is a specific indication to the contrary.

§ 1321.233 General rules.

(a) *How to get records.* Papers filed in connection with a hearing may be inspected and copied in the office of the HDS Hearing Clerk. Individuals may direct inquiries to the HDS Hearing Clerk, Department of Health, Education, and Welfare, 200 Independence Avenue, SW., Washington, D.C. 20201.

(b) *How to file and serve papers.*

(1) Anyone who wishes to submit papers for the docket shall file with the HDS Hearing Clerk an original and two copies except that only originals of exhibits and testimony transcripts need be submitted.

(2) Anyone who wishes papers to be part of the record shall also serve copies on the parties by personal delivery or by mail, and file proof of this service with the HDS Hearing Clerk. Service on a party's designated attorney is the same as service on the party.

(c) *When rules are suspended.* After notifying the parties the Commissioner or the presiding officer may modify or waive any rule in §§ 1321.233–1321.261, if the Commissioner or the presiding officer decides the action is equitable and does not unduly prejudice the rights of any party.

Arrangements for Hearing

§ 1321.235 How to request a hearing.

(a) *General rule.* A State agency has 60 days from receipt of the Commissioner's written notice of proposed disapproval of a State plan, plan amendment, determination that a State agency does not meet the requirements of this part or intended compliance action to request a hearing. The agency shall make its request in writing to the Commissioner with a copy to the Regional Aging Program Director.

(b) *What happens if a State agency does not request a hearing.* If the State agency does not request a hearing within the time allowed by paragraph (a) of this section, the Commissioner makes a final determination and notifies the agency by letter whether AoA will withhold all further payments under the plan or only payments for those portions of the plan affected by the failure.

§ 1321.237 How request is acknowledged.

(a) *Notice of hearing.* Within 30 days of receiving a hearing request, the Commissioner notifies the State agency in writing of the date, time, and place of the hearing and of the issues to be considered. The Commissioner publishes the hearing notice in the Federal Register.

(b) *When hearing is held.* The date set for a hearing is 20 to 60 days from the date the agency receives the hearing notice. However, the State agency and the Commissioner may agree in writing to a different date.

§ 1321.239 What the hearing issues are.

(a) *General rule.* The issues at a hearing are those included in the notice to the State agency specified in § 1321.237.

(b) *How the Commissioner may add issues.* At least 20 days before a hearing, the Commissioner notifies the agency by letter of any additional issues to be considered. The Commissioner publishes this notice in the Federal Register. If the agency does not receive its notice of additional issues in the required time, any party may request that the Commissioner postpone the hearing. If a request is made, the Commissioner sets a new hearing date that is 20 to 60 days from the date the agency received the notice of additional issues.

(c) *How actions by the State may cause the Commissioner to add, modify, or remove issues.* The Commissioner may add, modify, or remove issues if the State agency:

(1) Changes its practices or organization to comply with Federal requirements and its State plan; or

(2) Conforms its plan to Federal requirements and pertinent court decisions.

(d) *What happens if State action causes the Commissioner to add, modify, or remove issues.*

(1) If the Commissioner specifies new or modified issues, the hearing proceeds on these issues.

(2)(i) If the Commissioner removes an issue, the hearing proceeds on the remaining issues. If the Commissioner removes all issues, the Commissioner terminates the hearing proceedings. The Commissioner may terminate hearing proceedings or remove issues before, during, or after the hearing.

(ii) Before removing an issue, the Commissioner notifies the parties other than the Department and the agency of the issue and the reasons for removing the issue. Within 20 days of the date of this notice, the parties may submit comments in writing on the merits of the proposed removal. The Commissioner considers these comments and they become part of the record.

§ 1321.241 What the purpose of a hearing is.

The purpose of the hearing is to receive factual evidence and testimony, including expert opinion testimony, related to the issues. The presiding officer may not allow argument as evidence.

§ 1321.243 Who presides.

The presiding officer at a hearing is the Commissioner or a person the Commissioner appoints. If the Commissioner appoints a presiding officer, the Commissioner sends copies of the appointment notice to the parties.

§ 1321.245 How to be a party or an amicus curiae to a hearing.

(a) *HEW and State agency.* HEW and the State agency are parties to a hearing without having to request participation.

(b) *Other parties or amicus curiae.* An individual or group wishing to be a party or amicus curiae to a hearing may file a petition with the HDS Hearing Clerk no more than 15 days following publication of the hearing notice in the Federal Register. A petitioner who wishes to be a party must also provide a copy of the petition to each party of record at that time.

(c) *What must be in a petition.* A petition must state concisely:

(1) Whether the petitioner wishes to be a party or an amicus curiae;

(2) The petitioner's interest in the proceedings;

(3) Who will appear for the petitioner;

(4) The issue on which the petitioner wishes to participate; and

(5) Whether the petitioner intends to present witnesses, if the petitioner wishes to be a party.

§ 1321.247 What happens to a petition.

(a) *Petitions to be a party.*

(1) The presiding officer determines if the issues to be considered at the hearing have caused the petitioner injury and if the petitioner's interest is within the zone of interest protected by the governing Federal statute. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer states the reasons in the notice.

(2) Before making this determination, the presiding officer will allow any party to file comments on the petition to be a party. Any party who wishes to file comments must do so within 5 days of receiving the petition.

(3) If the presiding officer decides that parties by petition have common interest, the officer may require that they designate a single representative, or may recognize two or more of these parties to represent all of them.

(b) *Petitions to be an amicus curiae.* The presiding officer determines if the petitioner has a legitimate interest in the proceedings and may contribute materially to the proper settlement of the issues. The officer also determines if the petitioner's participation would unduly delay the proceedings. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer states the reason in this notice.

§ 1321.249 Rights of parties and amicus curiae.

(a) *What rights parties have.* A party may:

(1) Appear by counsel or other authorized representative in all hearing proceedings;

(2) Participate in any prehearing conference held by the presiding officer;

(3) Stipulate facts that, if uncontested, become part of the record;

(4) Make opening statements;

(5) Present relevant evidence;

(6) Present witnesses who must be available for cross-examination;

(7) Present oral arguments at the hearing; and

(8) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

(b) *What rights amicus curiae have.* An amicus curiae may:

(1) Present an oral statement at the hearing at the time specified by the presiding officer;

(2) Submit a written statement of position to the presiding officer before the hearing begins; and

(3) Submit a brief or written statement at the same time the parties submit briefs.

If an amicus curiae submits a written statement or brief, the amicus shall serve a copy on each party.

Conduct of Hearing

§ 1321.251 Authority of presiding officer.

(a) *General rule.* The presiding officer conducts a fair hearing, avoids delay, maintains order and makes a record of the proceedings. In so doing, he or she has authority that includes:

(1) Regulating the course of the hearing;

(2) Regulating the participation and conduct of parties, amici curiae, and other at the hearings;

(3) Ruling on procedural matters and, if necessary, issuing protective orders or other relief to a party against whom discovery is sought;

(4) Taking any action authorized by the rules in this subpart;

(5) Making a final decision, if the Commissioner is the presiding officer;

(6) Administering oaths and affirmations;

(7) Examining witnesses;

(8) Receiving or excluding evidence; and

(9) Ruling on or limiting evidence or discovery.

(b) *What the presiding officer may not do.* The presiding officer may not compel by subpoena the production of witnesses, papers, or other evidence.

(c) *When the presiding officer's authority is limited.* If the presiding officer is not the Commissoner, the officer certifies the entire record to the Commissioner, including a recommended decision on each issue in the hearing, but may not:

(1) Make a final decision; or

(2) Recommend reduction or withholding of payments.

§ 1321.253 Discovery.

A party has the right to conduct discovery against other parties. These discovery proceedings are subject to Rules 26–37, Federal Rules of Civil Procedure. The presiding officer promptly rules on any written objection to discovery and may restrict or control discovery to prevent undue delay in the hearing. If a party fails to respond to discovery procedures, the presiding officer may issue any order and impose any sanction (other than contempt orders) authorized by Rule 37 of the Federal Rules of Civil Procedure.

§ 1321.255 How evidence is handled.

(a) *Testimony.* Witnesses, under oath or affirmation, give oral testimony at a hearing. Witnesses must be available at the hearing for cross-examination by the parties.

(b) *Rules of evidence.* Technical rules of evidence do not apply to hearings described in this subpart. The presiding officer applies any rules or principles necessary to ensure disclosure of the most credible evidence available and to subject testimony to cross-examination. Cross-examination may be on any material matter, regardless of the scope of direct examination.

§ 1321.257 What happens to unsponsored written material.

Letters and other written material regarding matters at issue, if not submitted specifically on behalf of a party, become part of the correspondence section of the docket. This material is not part of the evidence or the record.

§ 1321.259 What the record is.

(a) *Official transcript.* HEW designates the official reporter for a hearing. The HDS Hearing Clerk has the official transcript of testimony, and any other material submitted with the official transcript. The parties and the public may obtain transcripts of testimony from the official reporter at rates that do not exceed the maximum fixed by contract between the reporter and HEW. Upon notice to the parties, the presiding officer may authorize transcript corrections that involve matters of substance.

(b) *Record.* The record for the hearing decision is the transcript of testimony, exhibits, and all other papers and requests filed in the proceedings except for the correspondence section of the docket. The record includes rulings and any recommended decision.

After the Hearing

§ 1321.261 Posthearing briefs.

The presiding officer fixes the time for filing posthearing briefs. They may contain proposed findings of fact and conclusions of law. The presiding officer may permit filing of reply briefs.

§ 1321.263 Decisions.

(a) *If the Commissioner is presiding officer.* If the Commissioner is the presiding officer, the Commissioner issues a final decision within 60 days after the time allowed for filing posthearing or reply brief ends.

(b) *If the Commissioner appoints a presiding officer.*

(1) After the time for filing posthearings or reply briefs ends, the presiding officer certifies the entire record, including his or her recommended decision, to the Commissioner.

(2) The Commissioner provides a copy of the recommended decision to the parties and any amici curiae. Within 20 days, a party may file with the Commissioner, exceptions to the recommended decision. The part must file a supporting brief or statement with the exceptions.

(3) The Commissioner reviews the record and, within 60 days of the date of receipt of the presiding officer's recommended decision, the Commissioner issues a final decision. The Commissioner provides copies of the decision to all parties and any amici curiae.

(c) If the Commissioner decides, after a hearing, that the plan or plan amendment is not approvable, that substantial noncompliance exists, or that the State agency does not meet the requirements of this part, the final decision states whether AoA will withhold all further payments or only payments under portions of the plan affected by the failure. This also applies if the hearing terminates prior to completion.

§ 1321.265 When a decision is effective.

(a) The Commissioner's decision specifies the effective date for AoA's reduction and withholding of the State's grant. This effective date may not be earlier than the date of the Commissioner's decision or later than

the first day of the next calendar quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appeal, or until the agency or the plan is changed to meet all Federal requirements except that the Commissioner may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

§ 1321.267 How the State may appeal.

A State may appeal to the U.S. Court of Appeals which has jurisdiction in the State, the final decision of the Commissioner disapproving the State plan or plan amendment, finding noncompliance, or finding that a State agency does not meet the requirements of this part. The State must file the appeal within 30 days of the Commissioner's final decision.

§ 1321.269 How the Commissioner may disburse the State's withheld payments.

The Commissioner disburses funds withheld from the State directly to any public or nonprofit private organization or agency, or political subdivision of the State, that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part.

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Part III

Environmental Protection Agency

Guidelines for Development and Implementation of State Solid Waste Management Plans

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 256

[FRL 1224-8]

Guidelines for Development and Implementation of State Solid Waste Management Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule contains guidelines for the development and implementation of State solid waste management plans (the guidelines). These guidelines are required by section 4002(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (the Act). States are eligible to receive financial assistance under subtitle D of the Act if the State plan has been approved by EPA. This rule establishes the requirements for State plans and recommends methods and procedures to meet those requirements. As set forth in the Act, the State plan must provide for the identification of State, local, and regional responsibilities for solid waste management, the encouragement of resource recovery and conservation and the application and enforcement of environmentally sound disposal practices.

EFFECTIVE DATE: August 30, 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Absher, Office of Solid Waste (WH-564), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, 202/755-9145.

SUPPLEMENTARY INFORMATION: On August 28, 1978, EPA published a proposed rule (43 FR 38534) containing guidelines for State solid waste management plans. Ten public meetings and a public hearing were held during the public comment period. This rule responds to comments made at the public meetings and hearing, as well as to the written comments received. This preamble addresses the major comments raised in the public comment period. All other comments are addressed in a document entitled "Public Comment on Proposed Guidelines for the Development and Implementation of State Solid Waste Management Plans" which may be obtained at Docket 4002(b), Room 2107, EPA (WH-564), 401 M St., S.W., Washington, D.C. 20460. The docket is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

Overview of Subtitle D

The objectives of the Act are to promote the protection of health and the environment and to conserve valuable material and energy resources. In order to accomplish this, the Act sets forth a national program to improve solid waste management including control of hazardous wastes, resource conservation, resource recovery, and establishment of environmentally sound disposal practices. This is to be carried out through a cooperative effort among Federal, State, and substate governments and private enterprise.

Subtitle D of the Act fosters this cooperative effort by providing for the development of State and regional solid waste management plans that involve all three levels of government. As the Federal partner in this process, EPA seeks, through guidelines and financial assistance, to aid State initiatives in the formulation and implementation of such plans.

Section 4002(b) of the Act requires the Administrator to promulgate guidelines for the development and implementation of State solid waste management plans (the guidelines). While these guidelines are to consider a broad range of topics, section 4003 identifies the minimum requirements which State plans must address. EPA provides financial assistance to help the States develop and implement their plans. Under section 4007, EPA reviews and approves State plans which satisfy the minimum requirements of section 4003.

It is clear from the statutory language and legislative history of subtitle D that the Congress intended States and localities to retain overall responsibility for the planning and actual operation of solid waste managment programs. (This is in contrast to subtitle C which directs EPA to administer and enforce the hazardous waste program in lieu of authorized State programs.)

Several commentors raised the question of whether Federal guidelines and standards developed under subtitle D would pre-empt State requirements concerning solid wastes. The Act does not specifically address this issue. However, EPA believes that subtitle D is meant to encourage, not preclude, State initiatives. EPA establishes only "minimum" requirements under this portion of the Act which should not prevent States from developing broader programs or stricter standards under authority of State law. In discussing the subtitle D scheme the House Report (H.R. Rep. No. 94-1491, 94th Cong., 2nd Sess. 33 (1976)) specifically stated:

> It is the Committee's intention that federal assistance should be an incentive for state and local authorities to act to solve the discarded materials problem. At this time federal preemption of this problem is undesirable, inefficient and damaging to local initiative.

Therefore EPA concludes that as long as Federal requirements are satisfied by State programs, subtitle D does not limit State power concerning solid waste management.

Role of State Plan

The State solid waste management plan is the centerpiece of the subtitle D system. Through the plan the State identifies a general strategy for protecting public health and the environment from adverse effects associated with solid waste disposal, for encouraging resource recovery and resource conservation, for providing adequate disposal capacity in the State, and for dealing with other issues relevant to solid waste management. The plan must also set forth the institutional arrangements that the State will use to implement this strategy. These arrangements include indentifying State, regional and local responsibilities for solid waste management, as well as providing for the establishment of the regulatory powers needed under State law to enforce the plan's provisions. Thus, the State plan is the organizing mechanism in the subtitle D system which ties the goals and requirements of the Act to State priorities and institutional arrangements.

The other components of the subtitle D system (the open dump inventory, the annual work program and Federal financial assistance) are designed to support the State plan.

The Open Dump Inventory

Under section 4004(a) of the Act the Administrator is to promulgate "regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps . . .". The criteria establish the level of protection necessary to assure that "no reasonable probability of adverse effects on health or the environment" will result from operation of the site. In setting these criteria EPA is providing a general definition of "sanitary landfill" and "open dump". Under section 4005(b) EPA is to publish an inventory of open dumps; i.e., a listing of those facilities which violate the criteria. Because the Act does not give EPA authority to enter private property to conduct such a survey, and because the States have the prime role

in the implementation of subtitle D (including appropriate enforcement actions), EPA has concluded that the State should be responsible for conducting the inventory.

The inventory of "open dumps" performs two major functions. First it informs the Congress and the public about the extent of the problem presented by disposal facilities which do not adequately protect public health and the environment. Second, it provides an agenda for action by identifying a set of problem sites, routinely used for disposal, which should be addressed by State solid waste management plans.

Essentially the inventory is a planning tool which supports the State planning effort. The States must know where the problem facilities are in order to satisfy section 4003(3) which requires that the plan "provide for the closing or upgrading of all existing open dumps within the State . . .". In order to accommodate that purpose and to facilitate prompt compliance with section 4005(b), EPA has given the inventory high priority in the State planning effort.

Annual Work Program

The annual work program, submitted with a State's application for financial assistance under section 4008(a)(1) of the Act, will provide a basis for determining whether the State plan continues to be eligible for approval and is being implemented by the State. The annual work program (which is described in the grant regulations (40 CFR Part 35)) summarizes the current year's program and sets forth activities for the coming year. Each year, a State's priorities and activities should be examined to ensure that the program is directed at achieving the desired health, environmental, and resource conservation results.

The annual work program represents a joint agreement between EPA and the State and presents a mutually satisfactory statement of reasonable progress in meeting the requirements of the Act as expressed in these guidelines. It represents a State's obligation incurred by acceptance of finanical assistance and must be developed in consultation with local elected officials and with public participation. As explained below, the work programs under the Resource Conservation and Recovery Act, as amended, the Clean Water Act, as amended (33 U.S.C. 466 et seq.), and the Safe Drinking Water Act (42 U.S.C. 300f et seq.) are being integrated through the State/EPA Agreement mechanism.

Financial Assistance

Sections 4008 and 4009 of the Act provide for financial assistance under subtitle D (funding of authorized State hazardous waste regulatory programs is provided under section 3011 of subtitle C of the Act). Section 4008 (a)(1) authorizes financial assistance for the development and implementation of State plans. The Act states that for this purpose, implementation does not include the acquisition, leasing, construction or modification of equipment or facilities, or the acquisition, leasing, or improvement of land. Funds appropriated under this section are to be allotted to the States in proportion to population and are to be distributed by States to State and substate agencies based upon the responsibilities of the respective parties for development and implementation of the State plan.

Section 4008 (a)(2) authorizes financial assistance to public solid waste management agencies and authorities for implementation of programs to provide solid waste management, resource recovery and resource conservation services, and planning for hazardous waste management activities. Financial assistance under section 4008(a)(2) may only be provided for programs certified by the State as consistent with the State or substate solid waste management plan. This assistance does not cover construction, equipment or land. Assistance is authorized for items such as facility planning and feasibility studies, consultation, surveys, and analyses, technology assessments, legal expenses, construction feasibility studies, and economic studies. These grants may be provided either directly to substate agencies or through the State.

Section 4008(e) authorizes financial assistance for improvement, conversion or construction of disposal facilities in which more than 75 percent of the solid waste disposal is from areas outside the jurisdiction of the community. The Act limits this assistance to not more than one community in every State. Section 4009 authorizes grants to certain rural communities which cannot feasibly be included in a regional solid waste management system. Such grants may be used for construction of solid waste management facilities which the State certifies as consistent with the State plan.

The Act provides no funding for acquisition of land or for operation or maintenance of facilities. Funding for construction of facilities is quite limited. This means that such costs will have to be borne directly by State and substate governments and by solid waste generators and facility users. The State should explore funding sources at all levels of government and should consider means of increasing its financial base through such methods as user charges.

The Guidelines

Section 4003 of the Act identifies the minimum requirements for approval of State plans. Under section 4002(b) the Administrator is authorized to issue these Guidelines for the Development and Implementation of State Solid Waste Management Plans. Section 4002(c) identifies a broad set of considerations for the guidelines. While the requirements of section 4003 clearly fall within the scope of the section 4002(b) guidelines, such guidelines are to address a range of issues broader than those found in section 4003. However, only the requirements identified in section 4003 may be the basis for disapproval of a State plan. They include:

(1) The identification of the responsibilities of State, local, and regional authorities in the development and implementation of the State plan;

(2) The prohibition of new open dumps, and the requirement that all solid waste be utilized for resource recovery or disposed of in an environmentally sound manner;

(3) The closing or upgrading of existing open dumps;

(4) The establishment of State regulatory powers necessary to implement the State plan;

(5) The elimination of State or local prohibitions of long-term contracts for the supply of solid waste to resource recovery facilities; and

(6) The provision of resource conservation, resource recovery or environmentally sound disposal practices.

EPA believes that the best way to honor Congressional intent is to draw a distinction between requirements and recommendations. Each of the subparts in the guidelines lists the overall requirements for plan approval, which are based upon section 4003 of the Act. The requirements sections are followed by a discussion of recommended procedures, which expand on the requirements and involve a consideration of the factors listed in section 4002(c). The requirements use the term "shall". The recommendations, which are advisory, use the term "should".

While failure to comply with a requirement is grounds for denying a grant, failure to comply with a recommendation will not affect grant eligibility. The recommendations are provided to assist the States in developing and implementing the State plan. Any process which complies with requirements of these guidelines will be acceptable to EPA for purposes of approval of the State plan.

The guidelines contain seven subparts (A–G). Subpart A presents the purpose and scope of the guidelines and the State plan. It also contains the procedures for State adoption and revision and EPA approval of the State plan. In addition, important terms are defined.

Subparts B, C, D, and E discuss, respectively, (1) the identification of State, local, and regional responsibilities, (2) the development of the State disposal program, (3) the development of the State resource conservation and recovery program, and (4) facility planning and development.

Subpart F discusses coordination with other programs. The broad definitions of solid waste and disposal make this coordination especially important. Subpart F emphasizes coordination with planning for residuals management under section 208 of the Clean Water Act, as amended (33 U.S.C. 1288), with the National Pollutant Discharge Elimination System (NPDES) under section 402 of that Act (33 U.S.C. 1342), with the surface impoundments assessment and State underground injection control program under the Safe Drinking Water Act (42 U.S.C. 300(f) et seq.), and with State implementation plans under the Clean Air Act (42 U.S.C. 7401 et seq.).

Subpart G lists the requirements for public participation in the development and implementation of State and substate plans.

Subpart A—Purpose, General Requirement, Definitions

These guidelines assist in the development of State solid waste plans. They include the minimum requirements for approval of State plans identified in section 4003 of the Act. They also address the portion of section 4005(c) which requires a mechanism in the State plan to allow "any entity" to protect itself from citizen suit by obtaining a compliance schedule which phases out those acts which violate the prohibition of open dumping.

Scope of the State Plan

These guidelines require the State plan to address all solid wastes in the State that pose potential adverse effects on health or the environment or provide opportunity for resource conservation or recovery. The plan should address residential, commercial, and institutional solid waste, hazardous, industrial, mining, and agricultural waste, waste treatment sludges, septic tank pumpings, and other pollution control residues. It should explore the nature and severity of these categories of solid wastes and establish priorities for their management.

State plans developed under these guidelines apply to Federal agencies, Federal lands and facilities on leased Federal lands in accord with section 6001 of the Act. Therefore, States should consult with appropriate Federal agencies and facilities during the development and implementation of the plan.

The range of activities included in the plan should be as broad as the Act's definition of "solid waste management." Accordingly, the plan should contain provisions concerning collection, source separation, storage, transportation, transfer, processing, treatment and disposal of solid waste.

Subtitle C of the Act provides for the authorization of State programs to regulate hazardous waste management and for financial assistance for such programs. Under section 3006 of the Act EPA will promulgate guidelines to assist States in the development of hazardous waste programs. Therefore, the guidelines proposed in this rulemaking defer to the section 3006 guidelines for the requirements for authorized State hazardous waste regulatory programs. However, there are a number of hazardous waste management activities that are not regulatory in nature and, thus, not covered by the section 3006 guidelines. Such activities are to be carried out under the authorities of subtitle D and are subject to these guidelines for State plans. In general, the State plan is to describe how hazardous wastes will be managed in the State, including identification of responsibilities for that management and provision of necessary hazardous waste treatment, storage, and disposal facilities.

The proposed subtitle C standards for generators of hazardous waste (40 CFR Part 250.29) would exempt persons who produce and dispose of 100 kilograms or less a month of hazardous wastes; and, these wastes could be disposed of in a facility certified by the State as meeting the section 4004 criteria. If the final subtitle C standards retain this or a similar exemption, the State should identify these exempted generators so that the State may gain control over the types and amounts of hazardous waste being disposed of at any one facility. These guidelines may be amended to require certain State actions after the final subtitle C regulations are promulgated.

State Plan Submission, Adoption and Revision

The plan must be developed in accord with public participation requirements discussed in subpart G of these guidelines. States are to adopt the plans in accord with State administrative procedures. In the proposed regulation EPA invited comment on whether it should require plan approval by the Governor or State legislature. The majority of the comments favored maintaining the flexibility inherent in allowing each State to follow its own State procedures. EPA is satisfied that as long as the public participation specified in subpart G is part of the approval process, the Act's objectives will be accomplished. Moreover, EPA believes that allowing such flexibility is consistent with subtitle D's reliance on State discretion in solid waste management planning.

These guidelines require that the State plan be developed within 18 months, that it cover a minimum of a five-year time period, and that it be adopted by the State. The State is to review the plan and, where necessary, revise and readopt it at least every three years. EPA is to approve or disapprove State plans and to provide financial assistance to States if the State plan has been approved, continues to be eligible for approval, and is being implemented by the State.

Several commentors stated that 18 months is inadequate time to develop a State plan of the broad scope required by these guidelines. While all required elements must be addressed in the State plan, EPA recognizes that certain lower priority areas will not be described in great detail in the State's initial plan submission. Therefore, EPA may approve a State plan which provides for time-phasing of activities, and which proposes less than full development of State planning and implementation activities over the five-year period, providing satisfactory justification is included in the State plan.

The plan may postpone planning and implementation activities for certain waste categories due to the need to focus resources on higher priority

categories. As indicated in § 256.02 of the guidelines, the State should determine which waste categories and activities have high priority based on the current level of management planning and implementation within the State, the extent of the solid waste management problem, the known health, environmental, and economic impacts, and the resources and management approaches available. While State priorities differ, EPA encourages States to emphasize planning and implementation activities for those waste categories with serious environmental impact and over which the State may have inadequate control, such as onsite industrial wastes.

State Plan Approval

Under section 4007 of the Act the Administrator shall approve plans which meet the requirements of paragraphs (1) (2) (3) and (5) of section 4003 and which contain provisions for revision. The State must revise its plan if the Administrator revises the minimum requirements of section 4003, if the Administrator determines that the plan is inadequate or if the Administrator determines that "such revision is otherwise necessary". Notice and public hearing must accompany such plan revision. In addition, the Administrator shall review approved plans from "time to time" and may withdraw approval of a plan if he determines that revision or correction is necessary "to bring such plan into compliance with the minimum requirements promulgated under section 4003 (including new or revised requirements) . . .".

EPA believes that sections 4007 and 4003 envision a scheme in which EPA grants initial plan approval on the basis of paragraphs (1) (2) (3) and (5) of section 4003 but reviews State plans on the basis of all the minimum requirements in section 4003, including paragraphs (4) and (6). This interpretation allows EPA to honor the Congressional intent expressed in section 4007 (that paragraphs 1, 2, 3 and 5 be the basis for initial approval) while maintaining section 4003's status as the list of "minimum requirements for approval of State plans".

This interpretation is a logical one because both paragraphs (4) and (6) involve assessments which are best made after the States have had some experience with plan implementation. For example, both EPA and a State will have a better sense of what regulations are necessary under State law to implement the plan, and thus of compliance with paragraph (4), once the state has attempted to implement plan provisions. Also, judicial interpretation of those efforts may provide insight into the adequacy of the State's regulatory scheme. Likewise a determination of what combination of practices "may be necessary to use or dispose of such waste in a manner that is environmentally sound," as required by paragraph (6) of section 4003, is best made after the State plan is in operation and there has been some experience with its implementation.

The proposed guidelines requested comment on the State/EPA Agreement concept. Under such an agreement, State work program submissions for various environmental programs would be integrated in an attempt to determine environmental priorities and develop effective and efficient solutions to environmental problems. Half of the commentors to these proposed guidelines opposed the State/EPA Agreement concept. The rest were divided between qualified and unqualified support. Some States were concerned that their existing institutional arrangements would make it difficult to integrate work programs; others were concerned that solid waste programs would lose visibility and possibly funding if combined with larger and better established programs.

In response to these and other comments, EPA issued a guidance document on March 21, 1979 (44 FR 17294) for State/EPA Agreements. The guidance does not require integrated work programs, nor does it intend to force reorganization and consolidation of State agency structures or changes to existing grantor-grantee relationships. The State/EPA Agreement process, however, is designed to bring together Federal, State and local entities to determine environmental priorities, define intermedia problems and develop creative, efficient and effective solutions. Integrated work programs are encouraged where feasible.

Beginning in fiscal year 1980, the State/EPA Agreement will present a practical and comprehensive mechanism by which the States and EPA can integrate and manage the technical and financial assistance programs to States under the Resource Conservation and Recovery Act, as amended, the Clean Water Act, as amended (33 U.S.C. 1251 et seq.), and the Safe Drinking Water Act (42 U.S.C. § 300f et seq.). States are encouraged to integrate other environmental programs into the State/EPA Agreement if possible.

Definitions.

The guidelines define certain key terms including "criteria," "facility," "implementation," "inactive facility," "inventory of open dumps," "operator," "permit," "planning," "provide for" and "substate." Commentors raised questions concerning the following definitions:

1. *Planning.* Some commentors said that there was a need to clearly distinguish between planning and implementation. Planning is defined in these guidelines as the process of "identifying problems, defining objectives, collecting information, analyzing alternatives, and determining the necessary activities and courses of action." This includes analysis of solid waste generation rates and assessment of the adequacy of existing resource recovery and disposal facilities and the need for new or expanded facilities. It also includes setting priorities for the management of different wastes, identifying responsibilities, developing the necessary legislation and administrative powers to implement the plan, and planning for State resource conservation, recovery, and disposal programs.

2. *Implementation.* Implementation is defined in these guidelines as "putting the plan into practice by carrying out planned activities or ensuring such activities are carried out." One aspect of implementation is carrying out the necessary regulatory activities to ensure that solid wastes are managed and disposed of in a manner that protects the public health and the environment. This includes applying health or environmental standards to facilities, assessing and inspecting facilities, conducting a permit or registration program, and carrying out the necessary enforcement activities.

3. *Inactive Facility.* An "inactive facility" is one which no longer accepts waste. This definition was not contained in the proposed regulation. It is included in this final regulation because some commentors were confused about the terms "closed facility" and "abandoned facility" in the proposed regulation. Those terms are no longer included in the guidelines.

These guidelines no longer treat "closed facility" as a term of art that means a *properly* closed facility. An operator may close a facility properly or improperly, but this does not change the fact that such a facility is closed. The operator's liability, if any, is based on his failure to close a facility in accord with environmental standards developed pursuant to the State plan.

The term "abandoned facility" has been dropped because it connotes the non-existence of a human agent responsible for the site. The concern over the environmental impact of so-called "abandoned" facilities is the same whether or not a party is available who may be legally liable for the damage. The concern is that a site which no longer receives wastes is creating an environmental problem due to such ongoing effects as the leaching of contaminants into groundwater. Therefore EPA addresses itself here to the broader set of "inactive" sites which may or may not be abandoned. This preamble discusses the relationship of the guidelines to inactive facilities in more detail later.

Subpart B—Identification of Responsibilities; Distribution of Funding

The guidelines require that the State plans identify the responsibilities of States and substate agencies to satisfy the requirement in section 4003(1). EPA believes that this allocation of responsibilities must be a matter for the State to work out with the other general and special purpose governments in the State. EPA does not attempt to stipulate any particular institutional arrangement because there will necessarily be circumstances where differing schemes are more appropriate.

State agencies will be responsible for planning activities. However, substate agencies may need to conduct specific types of planning concerning the number and kinds of facilities needed in particular areas and the different institutions needed (e.g., solid waste authorities or districts) for managing solid wastes. Substate planning may also be necessary for establishing coordinating management of different waste streams (e.g., coincineration of residential solid waste and municipal sewage sludge) or for establishing disposal or recovery facilities for new waste streams (e.g., industrial pretreatment residues).

Likewise there will be a need under the plan for developing health or environmental standards for facilities, assessing and inspecting facilities, conducting a permit or registration program, and carrying out the necessary enforcement activities. For the most part, such programs have been conducted by State agencies, although certain responsibilities (such as inspections) may be delegated to local public health agencies.

EPA's major concern in the process of allocating responsibility is that the institutional arrangement devised by the State aid the achievement of the substantive goals of the Act.

Subpart C—Solid Waste Disposal Programs

This subpart addresses the requirements contained in sections 4003(2) and 4003(3) of the Act. Under section 4003(2) the plan is to prohibit the establishment of new open dumps in the State and contain requirements that all solid waste be utilized for resource recovery, disposed of in sanitary landfills or otherwise disposed of in an environmentally sound manner. Under section 4003(3) the plan is to provide for the closing or upgrading of all existing open dumps within the State. The subpart has four general sets of requirements: (1) those affecting overall legal authority; (2) those involving regulatory powers; (3) those concerning closure or upgrading of existing open dumps; and (4) those involving compliance schedules for complying with the prohibition of open dumping.

Legal Authority and Regulatory Powers

Under section 4003(4) the plan shall provide for the establishment of State regulatory powers as may be necessary to implement the plan. As discussed earlier this provision is not a basis, under section 4007, for initial approval of a State plan but rather is relevant to later review of progress under the plan. The States must make a reasonable effort to develop the powers necessary for plan implementation in order to remain eligible for Federal funding.

Although the proposed version of the guidelines did not distinguish between regulatory powers and legal authority, EPA has decided to make this distinction to give meaning to the distinction made in section 4007 between the requirements of sections 4003 (2) or (3) and those of section 4003(4). EPA believes that section 4007 contemplates a scheme that would allow a State with a general statutory or common law authority to take action against new or existing open dumps to have an approved State plan while it developed the companion regulatory mechansims necessary to fully implement the plan. At the same time EPA does not believe that a State which does not have legal authority (according to statute or common law) to take action against disposal facilities for the general categories of environmental effects covered by the criteria can be in compliance with sections 4003 (2) and (3) of the Act. Therefore, EPA requires in these guidelines that the States have adequate legal authority to prohibit new open dumps and close or upgrade all existing open dumps. States will be allowed to develop regulations and administrative systems to implement that general authority after initial approval of the State plan. However the failure to provide for the establishment of State regulatory powers, as outlined in § 256.21, could constitute noncompliance with section 4003(4) and thus be the basis for withdrawal of approval for a State plan.

In the proposed guidelines EPA suggested that the States could wait until after approval of the State plan to prohibit establishment of new open dumps. The language of the Act, particularly that found in section 4004(c), does not allow for such flexibility. Therefore, EPA has changed that requirement to be consistent with the Act's intent. The prohibition of the establishment of new open dumps shall take effect no later than six months after the date of promulgation of the criteria or on the date of approval of the State plan, whichever is later.

In establishing legal authority the States must include some type of permitting mechanism to ensure that the establishment of new open dumps is prohibited. Some commenters expressed concern that EPA's concept of a permit was too narrow and beyond the authority of subtitle D. EPA meant to give a broad interpretation of that term and the guidelines define permit to reflect that broader concept. EPA believes that effective regulations must include a mechanism for translating generally applicable standards into specific requirements for individual facilities. Some kind of a certificate of permission issued to particular parties is the best means of achieving that end. Such a certificate also performs an important informational role because it provides a clear statement of the terms to which parties will be held. This is certainly advantageous to the permittee, but it also gives EPA, the State and the public information on how this part of the solid waste management plan is being implemented.

As long as the States can devise a scheme that achieves these goals, EPA will be flexible on what constitutes a permit. With this flexibility, there can be little doubt that such a permit requirement is within the Act's purview. A State program that does not have the capacity to translate generally applicable standards into site specific requirements or to adequately inform interested parties of those requirements cannot provide adequate assurance that the Act's objective will be met.

Closure or Upgrading of Existing Open Dumps

The Guidelines require the State to classify existing solid waste disposal facilities according to the criteria. The State is to establish priorities for the classification effort after considering potential health and environmental impact of facilities, the availability of regulatory powers to address the problems presented by these facilities and the availability of financial resources in the State solid waste management program. The State submits a list of the facilities that fail to satisfy the criteria to EPA for publication in the Federal Register. The States are to take steps to close or upgrade open dumps.

1. *The Open Dump Inventory.* One of the principal issues concerning State solid waste management planning is the role of the inventory of open dumps in subtitle D. EPA has received many inquiries and comments concerning the inventory, particularly on the issue of whether notice and a hearing must precede inclusion of a facility in the inventory published in the Federal Register. The "notice and hearing" issue, however, is merely part of a broader question concerning the purpose of the inventory in the program contemplated by the Act. The issue is whether inclusion of a facility in the inventory constitutes a determination that an identifiable party is engaging in the prohibited act of open dumping.

After considering public comment on this issue and after further analysis of the issue, EPA has concluded that the Act intended the inventory to be a planning tool which provides information to the States and the public. The act of listing does *not* constitute a legal determination which subjects a particular party to legal sanctions for violation of the Act.

EPA reached this conclusion after substantial public discussion of the issue. Early in the development of these guidelines EPA indicated that the States would conduct the inventory as part of their solid waste management planning, and many of the comments on the guidelines addressed the role of he inventory. On April 24, 1979, the National Solid Wastes Management Association (NSWMA) petitioned EPA, seeking regulations providing a notice and hearing opportunity prior to a facility's inclusion in the inventory list. Since the inventory would be part of the State planning effort, NSWMA's petition directly affected the content of these guidelines. In fact, the relief NSWMA sought would logically be a part of these guidelines. At the same time EPA was under court order from the U.S. District Court for the District of Columbia to promulgate these Guidelines by June 30, 1979. In order to air the notice and hearing issue and still make a reasonable effort to comply with that court order, EPA issued on May 15, 1979, a Supplemental Notice of Proposed Rulemaking (44 FR 28344) which invited public comment for 30 days on whether the guidelines should require notice and a hearing opportunity before a disposal facility is included in the inventory. The Notice explained EPA's tentative conclusion on the issue and included a copy of the NSWMA petition.

Several commentors argued that EPA's position on this issue, as stated in the Notice, differed from previous EPA statements about the inventory. EPA had a different view of the inventory when these guidelines were at an earlier stage of development. After further analysis of the Act, however, EPA changed its view. In issuing the Supplemental Notice, EPA sought to alleviate any confusion resulting from this reassessment of the issue and to provide the public with an opportunity to focus on the inventory's role.

The fact that EPA's interpretation of the Act, as set forth in this final regulation, differs from the viewpoints expressed in the proposal and in statements by Agency personnel does not undermine the legitimacy of that interpretation. EPA is not bound to legal interpretations advanced in earlier stages of a regulation's development. The role of the inventory in the subtitle D program is a complicated issue which necessarily involves an analysis of several parts of the Act. To hold the Agency to early viewpoints on such complex questions hinders responsible decision making and discourages the Agency from engaging in open public discussion on these matters. Ultimately, questions surrounding the role of the open dump inventory must be resolved after a substantive analysis of the Act, its legislative history and other applicable Federal law.

Under section 4005(b) EPA is required to *publish* an inventory of "open dumps" (those facilities which do not satisify the criteria promulgated under section 4004). Section 4005(c) prohibits "any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the *open dumping* of solid waste or hazardous waste." The essential problem presented by the Act is to determine the relationship between these two provisions. The task is complicated by the fact that sections 4005(b) and 4005(c) originated in differing House and Senate bills and that there is no conference report to resolve the problem presented by these incongruous provisions.

In the effort to reconcile the differences between the Senate and House approaches to this issue, EPA sought an interpretation of the Act that retained as much of the original intent of the two bills as possible. In doing so EPA believes that it has devised a sound program that best achieves the overall objectives of the Act.

The inventory of open dumps was part of the House bill which relied totally on the States to regulate the problems associated with these facilities. The inventory was designed to be an informational tool that would give a comprehensive picture, based on a uniform definition of unacceptable environmental effects, of the problem presented by these "open dumps". This list was also to aid the States in directing their efforts for the closing and upgrading of existing open dumps.

The Act indicates that Congress meant to maintain the inventory's status as an informational tool and not as a regulatory mechanism. For example, there is no requirement for a "hearing on the record" or a public hearing in conjunction with the inventory. Likewise, the Congress required publication within one year of promulgation of the criteria. Knowing that the volume of problem sites could run into the thousands, it is doubtful that the Congress could have envisioned the inventory as a series of individual adjudications with all the attendant delays involved in preparing and documenting every part of the case. Also, the Congress could not have viewed the inventory as anything but informational in terms of EPA's involvement. The Act does not give EPA the authority to enter on private property to take samples or to require reporting on the facility's environmental effects. The absence of these necessities of a viable regulatory program indicates that the inventory can only be an informational tool. (The absence of EPA authority to conduct a proper inventory evaluation of facilities also suggests that the States must conduct the evaluations under authority of State law.)

The Senate bill prohibited the act of open dumping and allowed for Federal, State and citizen enforcement of that prohibition. There was no facility classification scheme. In the final version of the Act, the Federal enforcement provision was deleted, but States and the public were allowed to use the citizen suit provision (section 7003) to enforce the prohibition. In

prohibiting open dumping the Act does not specify who shall be deemed responsible. The legal liability of particular individuals is a matter for the courts to resolve on a case by case basis.

EPA does not believe that the inventory was designed to implement the prohibition of open dumping. Certain flaws in statutory interpretation and basic logic appear in any attempt to link the two provisions. For example, section 4005(c) requires each State plan to assure that all open dumps listed in the inventory "comply with such measures as may be promulgated by the Administrator to eliminate *health* hazards and minimize potential *health hazards*". As section 1002(b)(4) indicates, the Act is concerned with *environmental* as well as health effects in prohibiting open dumping. Section 4005(c) also requires State plans to provide a mechanism for giving compliance schedules to parties engaged in open dumping. Such schedules are to lead to "compliance with the prohibition on open dumping" and are only available to entities which have no other "private or public alternative" to open dumping.

If inclusion on the inventory of open dumps also constitutes a determination of liability for open dumping, it is unclear which steps follow listing. Is the State to focus on the present or potential health hazards associated with the facility, or is it to address the full range of health *and* environmental concerns implicit in the open dumping concept? Also, is the State required to examine "public or private alternatives" for all listed facilities? Since the Act creates two differing approaches to handling listed open dumps and entities which could violate the open dumping prohibition, EPA believes that the dichotomy between the Senate and House approaches to the solid waste managment program should be maintained.

EPA's interpretation avoids the conceptual problems involved in using the inventory to implement the open dumping ban. Fundamental to any determination of legal liability for an offense is a clear definition of *who* is responsible and of the *acts* which constitute the offense. The inventory is not well-suited to establishing either of those. In conducting the inventory, site inspectors will be evaluating the environmental impact of particular sites on particular days. They will not be investigating the relative responsibilities of the various parties involved in disposal activity (e.g. facility owner, facility operator, parent companies, users of the facility). Likewise, inspectors will not be focusing on the particular acts which lead to the environmental damage (e.g. facility selection, design, and management; the bringing of particular wastes to the facility). Moreover, the inventory is not well-suited to defining the duration of a violation. The inventory is, after all, a picture of conditions at the facility at a particular time. The inventory does not in itself determine whether those conditions are due to ongoing practices at the facility or are the result of temporary problems at the time the evaluation occurred. Thus the inventory is not designed to establish several of the key elements necessary for placing legal liability on responsible parties and should not, therefore, be treated as an EPA determination that particular parties are open dumping.

An interpretation of the Act linking the inventory to the open dumping prohibition undermines the Act's objective of leaving principal responsibility for implementing solid waste management programs to the States. The language of subtitle D and its supporting legislative history clearly indicate that the Federal Government was to facilitate the development of State initiatives in this area. The removal of the Senate provisions for Federal enforcement of the open dumping prohibition in the final version of the Act underscores this point. Were EPA's publication of the inventory to constitute an Agency decision that each listed site is in violation of Federal law, EPA would be heavily involved in the administration of solid waste programs. EPA would have to carefully supervise the States in the conduct of the inventory. Were EPA to be ultimately responsible for the decision to list, it would have to carefully review State decision making, overruling decisions where appropriate. EPA does not believe that the Congress intended that EPA have such a central role in State solid waste management.

EPA concludes, therefore, that the inventory was not designed to be a decision on the open dumping issue. The inventory is an adjunct to the State planning process. It provides information to the public and helps the States in identifying their priorities. In publishing the inventory EPA is reporting on the first phase of the State planning effort and thus will include all facilities identified by the State. EPA will not add or remove facilities from the inventory. The open dumping prohibition is a provision of Federal law which stands on its own, separate from the State planning program. In conjunction with the citizen suit provision, the open dumping prohibition creates a Federal cause of action allowing citizens and States to seek relief in Federal Court for damaging solid waste management practices.

Information generated during the inventory could be available to parties seeking to bring an open dumping action. That data would be made available in accord with applicable Federal and State law concerning the release of such information. Questions concerning the admissibility and weight of the information as evidence are for the courts to resolve. The ultimate issue of whether particular parties are guilty of open dumping would be for the court to decide after *de novo* review of the particular facts in each case. The point, however, is that while data generated in the inventory may be evidence relevant to an open dumping suit, the act of listing a site does not constitute an EPA decision on the open dumping issue which deserves judicial deference as a matter of law.

The public comments on the inventory suggested varying interpretations of the inventory. Some called it a rule; others called it a series of adjudications. A few commentors argued that the inventory was part of a *de facto* licensing program that implied permission to operate for those facilities not included on the list. None of these characterizations are appropriate because they imply that EPA has decided something concerning the facility. The inventory is only an informational tool. It does not adjudicate the rights of any persons or provide official approval for facilities not included. Likewise it is not a rule setting EPA policy, but rather is a tool to aid the States in defining their own priorities.

2. *Notice and Hearing Implications of the Inventory.* The Supplemental Notice of Proposed Rulemaking focused public attention on the question of whether notice and a hearing opportunity must accompany the inventory of open dumps. The NSWMA petition, which was incorporated into the Supplemental Notice, argued that a notice and hearing opportunity was required by the Act, the Administrative Procedures Act and the U.S. Constitution. The Act does not require hearing proceedings for the inventory. No hearing or notice requirement is found in section 4005(b). Some commentors argued that section 7004(b) requires public participation before publication of the inventory. These guidelines provide for public participation at several key stages in the State planning process, including review of the plan's priorities for conducting the

facility classifications. Those requirements provide an ample opportunity for public input on this aspect of the subtitle D program without direct public participation in the inventory list.

An added round of public participation on the inventory is particularly inappropriate because EPA will not be rendering a decision. In publishing the list EPA is merely reporting to the public on the progress of one important phase of the State planning program. Some commentors challenged this interpretation of EPA's role arguing that conduct of the inventory was EPA's responsibility and that the States are merely acting as EPA's agents in carrying out the inventory. EPA rejects this view. Section 4005(b) only requires EPA to *publish* the inventory. More importantly, the Act does not give EPA authority to enter private property to evaluate facilities for possible inclusion in the inventory. EPA's obvious lack of necessary authority, coupled with subtitle D's clear reliance on State initiatives for implementation functions, leads EPA to conclude that the inventory should be handled by the States.

In considering the applicability of the Administrative Procedures Act (APA) (5 U.S.C. 51 et seq.), several commentors argued that the inventory was an adjudication, licensing or rulemaking proceeding for purposes of the APA. After analyzing these comments EPA concluded that none of these characterizations properly describes the inventory. As discussed earlier the inventory is only an informational tool; and, therefore, its publication in the Federal Register is not the kind of agency action meant to be covered by the Administrative Procedures Act's notice and hearing provisions.

Several commentors argued that publication of the inventory without a formal notice and hearing opportunity constituted a denial of property without due process of law, violating the Fifth Amendment of the Constitution. EPA certainly does not seek to deny the due process rights of individuals in performing its part of the subtitle D program. It must be recognized, however, that not every government action which may affect an individual's property interests requires formal notice and hearing procedures. Generally some legal sanctions must be brought to bear on an individual before the due process right arises.

The issue in considering subtitle D's implications for due process rights is not a question of whether those rights exit at all, but rather when those rights are properly invoked. Individuals involved in solid waste disposal will have an opportunity to be heard before government sanctions are permanently imposed. As indicated earlier, however, the inventory is not an EPA determination resulting in legal sanctions. By including a site on the inventory, EPA has not ordered any identifiable individuals to do anything.

Several of the key questions for legal liability—namely *who* is responsible for which *acts*—are not necessarily resolved by the inventory process. Under these circumstances it would be premature to hold a hearing because it is unclear who has the right to a hearing and what the accusations are. Once States have completed further investigations and are ready to direct their enforcement efforts at particular actions by particular individuals, the people in question will have an opportunity to be heard in either an administrative or judicial forum. States will be bound under their own laws and the U.S. Constitution to assure that there will be no denial of property without due process of law. Several comments from States showed an awareness of that obligation and indicated that existing State procedures would require various opportunities to be heard prior to the imposition of sanctions.

In arguing for a notice and hearing opportunity prior to publication of the inventory, commentors identified a variety of bases for that right. Some saw the right growing out of the link between the inventory and the open dumping prohibition. As indicated previously, there is no such link and therefore no such hearing right.

Others argued that the bad publicity associated with a facility's inclusion on the list would unfairly affect the operator's business. In particular, commentors noted that the inventory would encourage citizen actions (including suits brought under the Act) or responses by local governments which could interfere with the continued operation of listed sites.

It is not clear that the inventory will result in unfair criticism. In publishing the inventory, EPA will make every effort to clarify the status of the inventory as an informational exercise which does not imply legal liability on the part of any particular party. Such clarification may need to be given on a State by State basis in order to reflect the way the inventory is being used by each State solid waste program.

EPA cannot completely eliminate the possibility that some parties will improperly characterize the meaning of the inventory. EPA will, however, assure that the inventory clearly states the purpose, basis and significance of the information provided. Parties affected by bad publicity will have an opportunity, in an administrative or judicial forum, to present their case prior to the imposition of legal sanctions against them.

Several commentors expressed particular concern that the inventory would lead to citizen suits against listed facilities. Under some circumstances inclusion of a facility on the inventory may increase the likelihood that some party may sue some other party concerning conditions at the facility. In marginally increasing the chances of suit, however, EPA is not denying property without due process of law. A civil suit in Federal court is hardly a summary proceeding in which the defendant has little opportunity to be heard. In fact the judicial forum probably affords the ultimate in due process of law.

Some commentors suggested that inclusion on the inventory was a prerequisite to the establishment of legal liability for open dumping. That conclusion reflects a misunderstanding of the Act. Citizen suits against acts of open dumping may be initiated regardless of the inventory process. Only a compliance schedule issued to specific parties, as contemplated by section 4005(c), insulates these parties from suit.

At least one commentor suggested that a citizen suit is just one of several "hindrances" to the solid waste industry, and that EPA should not be providing information that encourages such suits until the facility operator has had a formal notice and hearing opportunity. While some people may attempt to abuse the legal system, EPA does not believe that citizen suits are merely hindrances to the industry. Citizen suits may be legitimate expressions of genuine public concern that seek relief for actions that seriously threaten public health and the environment. Such suits will provide all parties, including those accused of open dumping, their day in court.

This leads to a general point about the notice and comment issue which should not be ignored. While EPA does not seek to deny legitimate due process rights, there is a countervailing interest that must be considered—the public's right to be informed of the dangers to their health and environment. The Act intended the open dump inventory to inform the public about the dangers associated with various disposal facilities. This would allow the public and the States to take protective action.

An enforcement action against responsible parties would be only one of several available options.

Since the inventory is not an accusation of wrongdoing against specific parties and since notice and hearing opportunities will precede the imposition of legal sanctions, EPA believes that it is inconsistent with the Act and contrary to the public interest to withhold this information from the public.

EPA's interpretation of the inventory means that it is up to the States to assure protection of the due process rights of parties affected by State regulatory activities. Several State agencies indicated that various formal or informal procedures for receiving comments (including hearing opportunities) would be conducted in conjunction with the inventory as a matter of State law. EPA approves of those efforts.

EPA does not believe, however, that it should be requiring the States to inform any particular parties according to any particular procedures. There are many different ways to assure that the system is not unfair to affected parties, and EPA believes that the States should be allowed to fashion a response appropriate to the circumstances. If EPA attempted to impose particular "notice" requirements, it might be unnecessarily intruding in matters of State law. For example, inclusion of a facility on the list does not establish the legal liability of any particular person as a matter of Federal law. Therefore, it is impossible to determine under the Act who is the appropriate recipient of notice. However, depending on the use of the inventory under State law, there may be clear legal requirements for who shall receive notice.

In order to avoid this potential problem EPA has removed any reference to notice and comment procedures in the requirements of subpart C. However, to indicate EPA's general preference for full disclosure of inventory information the guidelines recommend in subpart G that the States inform all affected parties of site classification results.

In response to the Supplemental Notice, EPA received comments supporting and opposing EPA's general position. Several commentors expressed concern that the interpretation suggested by NSWMA would increase administrative expenditures per facility and greatly reduce the number of facilities that could be evaluated with the limited funding available under subtitle D.

Such an outcome is possible and would be incompatible with Congressional intent that the inventory be completed promptly. This suggests that EPA's interpretation, which avoids the need for hearings while respecting individual rights, best accords with Congressional intent.

3. *Closure or Upgrading Procedures.* Section 4003(3) requires the plan to provide for the closing or upgrading of all existing open dumps. States may achieve this through a variety of mechanisms (e.g., permits, administrative orders, general regulations). Establishment of compliance schedules for each facility may be the best mechanism to achieve compliance with section 4003(3), but EPA does not wish to exclude the use of other approaches as long as the State can show that some effective action will be taken to close or upgrade open dumps.

The plan must, however, provide some means for assuring EPA and the public that steps are being taken to deal with the problem presented by existing open dumps. The guidelines, therefore, require that the plan reference some evidence that steps have or are being taken to close or upgrade each facility. By "evidence" EPA does not imply that the States must have a document, legally admissible in court, for each facility on the inventory. EPA is merely seeking documentation which indicates that some steps have been or are being taken to eliminate the problems associated with each site. Evidence of action could include an administrative order, a permit, or even a report on the site which indicates that problems identified during the inventory have been remedied.

4. *Inactive Facilities.* The proposed guidelines required that inactive disposal facilities (referred to as "abandoned facilities" in the proposed guidelines) which continue to produce adverse health or environmental effects be subject to classification according to the criteria and publication in the open dump inventory. Most commentors agreed that inactive disposal facilities can and do cause severe adverse health and environmental problems and that these facilities should not be ignored. A number of commentors, however, questioned EPA's authority to require State plans to include such facilities in the open dump inventory process. They were also concerned about what enforcement action the State might reasonably take, especially where a facility has been abandoned or ownership has been transferred or relinquished, and legal liability and financial responsibility are difficult to establish.

It is important to note that since these guidelines were proposed, there has been an influx of reports of inactive sites posing substantial endangerment to public health and the environment. It is, therefore, incumbent upon the States to learn as much about problem sites in their jurisdictions as possible. The guidelines recommend that inactive facilities be evaluated for current or potential problems and that the State take steps to minimize or eliminate adverse health or environmental effects, particularly in emergency situations. If corrective actions by facility owners or operators cannot be brought about, public agencies should take the necessary measures to protect public health and safety. This should include, as a minimum, notification of adjacent residents and other affected parties of the potential health or environmental hazards.

EPA recognizes that there is some question about whether the environmental problems associated with inactive facilities fall within the scope of "disposal" as defined in the Act. Section 1004(3) defines disposal as "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or waters so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water". Taken literally this definition could encompass some aspects of pollution found at inactive facilities.

A second crucial question, however, is whether the particular regulatory programs created by the Act can be meaningfully applied to inactive sites. The hazardous waste program, under Subtitle C of the Act, calls for the issuance of permits (setting performance standards and operational controls) to owners and operators of facilities for the disposal of hazardous waste. Such a scheme is inappropriate for inactive facilities and, therefore, EPA has concluded that Subtitle C does not apply to inactive facilities.

In examining the open dump inventory under subtitle D, a slightly different problem arises. There is no reason to avoid collecting information on inactive facilities as it could be useful in the development of the State plan. At the same time EPA recognizes that inactive facilities present unique management problems that will require different kinds of responses by the States. Thus the plan may not be able to establish routine procedures for the closing and

upgrading of such facilities in the same way that such procedures will be possible for active facilities.

EPA has decided that there is no basis to exclude all inactive facilities from the scope of the open dump inventory. Yet EPA also believes that active facilities were intended to be the focus of the subtitle D program. The question of how the inventory addresses inactive facilities is one to be resolved in the establishment of State priorities for the inventory. In negotiating this question EPA and the State will be able to consider the magnitude of the environmental problem presented by inactive facilities and the State's ability to close or upgrade such facilities.

In writing the Guidelines EPA has included a specific set of recommendations on inactive facilities that should be part of the State plan. In applying the Guidelines' requirements for the inventory to inactive facilities, EPA recognizes that the meaning of "closing or upgrading open dumps" may have to be flexible to accommodate the unique problems involved in addressing inactive facilities.

The agency may use Section 7003 (Imminent Hazard) of the Act to bring suit against inactive facilities which pose human health and environment problems. This section is designed to prevent any imminent and substantial endangerment to human health or the environment from the improper disposal of solid waste. Under this procedure, the Agency can seek whatever remedy may be necessary to control the problem.

Compliance Schedules Affecting the Prohibition of Open Dumping

Section 4005(c) requires the plan to provide for compliance schedules for each entity that can show that it has no "public or private alternatives for solid waste management to comply with the prohibition on open dumping". The compliance schedule is to set forth "an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping within a reasonable time". The meaning of reasonable time is a matter for the State to decide, but no compliance schedule may allow open dumping to continue five years beyond publication of the inventory. By that time, the proper implementation of the plan should assure that adequate, environmentally acceptable disposal capacity is available in the State.

In determining whether other "public or private alternatives" exist the States should examine a range of factors concerning the State's overall solid waste management problem. EPA recommends that the State consider the availability of processing and disposal at other facilities, cost constraints, existing contractual agreements, the likelihood of incremental environmental damage and other pertinent factors. A compliance schedule for owners and operators of facilities may involve steps to close or upgrade the facility. Upgrading is, however, the objective of the compliance schedule and not a "public or private alternative" for purposes of determining whether a compliance schedule is justified.

It should be made clear that the type of compliance schedule contemplated by section 4005(c), which includes an examination of public or private alternatives, is the only kind of compliance schedule that protects a party from the open dumping prohibition. The section 4005(c) compliance schedule is issued to particular parties, not sites. It can be issued to operators of disposal facilities but could also be issued to those parties that generate or transport wastes. The section 4005(c) compliance schedule may be coordinated with any schedule for closing or upgrading of a facility developed to comply with section 4003(3). Only those individuals bound by the compliance schedule, however, may be insulated from an open dumping action.

Subpart D—Resource Conservation and Recovery

One of the major objectives of the Act is to encourage resource recovery and resource conservation. As defined in the Act, resource recovery is the recovery of material and energy from solid waste, while resource conservation includes the reduction of the amounts of solid waste that are generated, the reduction of overall resource consumption and the utilization of recovered resources.

These guidelines establish several requirements for State plans to achieve this objective. The guidelines require the State plan to provide for the development of a policy and strategy to encourage resource recovery and resource conservation. This strategy should focus on removing existing technical, economic, and institutional constraints that impede increased resource recovery and conservation. State activities in this area could include technical assistance, training, information development and dissemination, financial support programs, and programs to develop markets for recovered materials and energy.

Several commentors suggested that the guidelines provide more detailed advice on the elements of a State strategy and on methods to implement this strategy. Such advice can be found in "Developing a State Resource Conservaton and Recovery Program," a guidance document available from EPA.

The Act and these guidelines require State plans to ensure that local governments are not prohibited under State or local law from entering into long-term contracts for supplying solid waste to resource recovery facilities. This requirement reflects the concern that the development of resource recovery facilities has been hindered by not having a guaranteed long-term supply of solid waste. The guidelines recommend that the State plan provide for State agency review of pertinent State and local statutes, and for the development of a strategy for eliminating the long-term contracting restrictions on the supply of waste to resource recovery facilities.

Several States raised concerns about their ability to comply with this requirement. They cited State constitutional provisions for home rule as restricting their influence on local laws of this type. It is recognized that States and State agencies may have limited ability to modify local procurement laws. The guidelines contain a recommended procedure for the State to pursue, in conjunction with local governments, to change local laws violating this requirement. The Act envisions a cooperative State-local effort in meeting its goals, within the framework of the State constitution and laws.

One commentor pointed out that long-term contract restrictions have been enacted for sound reasons, such as to discourage corruption. It should be noted, however, that the Act only requires elimination of restrictions impacting resource recovery facilities; and, even where these restrictions are eliminated, there are other methods which may be employed to safeguard the contracting process (such as split bidding and acceptance of the lowest bid.)

Finally, several commentors asked what is meant by "long-term". This refers to a contract length sufficient to repay the capital costs of the resource recovery project. It is usually a 20 year period.

Under section 6002 of the Act each "procuring agency" is required to procure "items composed of the highest percentage of recovered materials practicable consistent with maintaining a satisfactory level of competition".

As defined by the Act a "procuring agency" includes "any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement * * *". The proposed guidelines contained a provision requiring compliance with section 6002 as a condition for approval of a State solid waste management plan. After analyzing the comments received on that provision and reassessing the relationship between sections 6002 and 4003, EPA has decided to discuss section 6002 in the "recommendations" and not the "requirements" portion of these guidelines.

Section 6002 applies to State agencies by its own terms and does not require final guidelines under section 4002 before it is applicable to State procurement. States should be addressing the requirement of section 6002 in handling all of their Federal funds regardless of whether they develop State solid waste management plans that satisfy the requirements of section 4003. EPA has deleted any reference to section 6002 in the requirements portion of subpart D to avoid any suggestion that the procurement requirements of the Act are only enforceable in the context of State solid management planning.

A number of States commented that the State solid waste agency can have only limited impact on the State procurement process. EPA recognizes that State solid waste management agencies are generally not involved in procurement practices and policies. However, these guidelines recommend that the State solid waste agency provide information and guidance on recoverded materials to the State procurement agency and encourge that agency to develop procurement procedures in line with the section 6002 requirements. State solid waste management agencies should also seek to implement the section 6002 provisions wherever possible in their procurement activities and thereby set an example for other State agencies.

The guidelines recommend resource recovery and resource conservation as the preferred methods of solid waste management whenever technically and economically feasible. While resource recovery and conservation may reduce land disposal needs, however, these methods will not eliminate the need for land disposal. It is expected that in the near term, resource recovery and conservation will have only a limited impact on the solid waste generated nationwide. Therefore, there will continue to be a need for environmentally sound land disposal facilities in order to meet the objectives of the Act.

Subpart E—Facility Planning and Implementation

These guidelines require that the State plan provide for adequate resource conservation, recovery, storage, treatment, and disposal facilities and practices necessary to use or dispose of solid and hazardous waste in an environmentally sound manner. These guidelines also recommend a number of actions that could be undertaken to help assure that the necessary facilities and services are in fact provided for.

Several commentors emphasized that in complying with this requirement, it is important to strike an appropriate balance between public and private sector activities. These guidelines do not favor one over the other. In some parts of the country, private sector initiatives may be sufficient to ensure that the needed facilities are available. However, in other instances, there may be a need for greater involvement of State or substate governments. This involvement should include an awareness of private sector activities in order to determine whether public sector involvement in facility planning and implementation is necessary.

EPA recognizes that there is an established solid waste management industry offering a wide range of services, including the design, construction, and operation of processing, storage, treatment, transport, disposal, and recovery facilities. It is not the intent of these guidelines that the public sector needlessly supplant or duplicate activities of the private sector. State and substate agencies are encouraged to establish policies for free and unrestricted movement of solid and hazardous waste across jurisdictional boundaries and procedures for sharing information useful to prospective and established entrepreneurs, as well as to provide relevant planning information to industry regarding population and waste generation trends, environmental conditions and other topics that would assist in the establishment of financially and environmentally sound facilities.

The guidelines recommend a statewide assessment of the adequacy of existing facilities and an evaluation of the need for new or expanded facilities. The guidelines purposely leave it up to State discretion whether this needs assessment is to be conducted by State or substate agencies or by a combination of the two. One commentor pointed out that the needs assessment should consider the amount and extent of interstate transportation of solid wastes. A recommendation was added to include such considerations in assessing the need for facilities.

Where facilities and practices are found to be inadequate, actions should be taken to help ensure that needed facilities are developed by State or substate agencies or by the private sector. For areas found to have five or fewer years of capacity remaining, more detailed planning should be carried out, including evaluation of technologies and site locations. Implementation schedules also should be developed. It is widely accepted that facility siting is one of the most difficult solid waste management problems. Many commentors stressed that it is preferable for facility acquisition activities to remain the responsibility of local and regional governments. However, recent experience indicates that it is becoming more and more difficult for substate governments to obtain sites for solid waste disposal facilities. This is especially true for facilities that store, treat, or dispose of hazardous wastes.

These guidelines recommend that where there is less than two years projected capacity, the State should have the authority to acquire facilities or cause facilities to be acquired. The majority of the States responding to this recommendation agreed that it is important for the State plan to explore options for more direct State control over siting and facility development if local government and private sector initiatives fail.

Several commentors emphasized that due to the diversity in State constitutional provisions and legislative and regulatory authorities, EPA should not dictate specific methods for the State to obtain greater control over facility acquisition. EPA is not requiring any particular strategy for the States, but suggests that the States investigate the following methods recommended by commentors for acquiring more direct control over siting and facility development: obtaining the authority to override local zoning laws or to contract directly for facilities and services; using condemnation or eminent domain procedures; arbitrating siting disputes; establishing site locations at the invitation of local governments; requiring facility permits to conform to regional plans developed under the State plan; and, instituting a public utility agency to regulate the supply of services.

With regard to hazardous waste facility planning, there are certain special factors to be considered. Most hazardous waste recovery, treatment, storage, and disposal facilities are privately operated. Hazardous waste generators are often large industries with heavy capital investments in plants and equipment into which onsite hazardous waste management facilities have been integrated. In addition, there are over 100 private offsite hazardous waste management facilities which provide service to many industries.

The State plan should provide for adequate hazardous waste recovery, treatment, storage, and disposal facilities, including public facilities where necessary. States should develop implementation schedules which will insure siting of the necessary hazardous waste management facilities. State plans should also encourage waste exchanges and other waste utilization practices for hazardous wastes.

Subpart F—Coordination With Other Programs

Section 4003(1) requires the State solid waste management plan to identify means for coordinating regional planning and implementation under the State plan. Section 1006 requires the Administrator to integrate all provisions of this Act (including approval of State plans) with other Acts that grant regulatory authority to the Administrator in order to prevent duplication of administrative and enforcement efforts. To satisfy these general objectives the guidelines require that the State plan provide for coordination with Federal programs that affect State solid waste management.

Several commentors asked what the guidelines mean by coordination. Generally the goal of coordination is a balancing and sharing of responsibilities among programs with the aim of avoiding duplication of effort and gaps in program coverage. That goal may be achieved through the use of a wide range of administrative techniques, depending on the particular institutional arrangements in a State government. It is impossible to specify in these guidelines a general set of coordination steps which will be applicable to all States. Therefore, these guidelines identify several Federal programs that are relevant to solid waste management and require that the States examine the relationship between those programs and the State plan. The particular steps necessary to accommodate sound administration of solid waste programs to the objectives of other Federal programs must be developed on a State-by-State basis through negotiations between EPA, the States and other Federal agencies.

Coordination With Guidelines and Regulations Under the Act

Certain guidelines and regulations developed under the Act which should be considered in conjunction with these guidelines for State plans include:

(1) Interim regulations to implement the Resource Conservation and Recovery Act of 1976 (40 CFR Part 35), as amended. These regulations establish procedures and policies for grants and financial assistance programs.

(2) Identification of regions and agencies for solid waste management, interim guidelines (40 CFR Part 255). Identifications should be made following the criteria and procedures in the Part 255 guidelines. Completed identifications should be reviewed to determine whether new or revised identifications must be made to comply with these planning guidelines.

(3) Solid waste disposal facilities, proposed criteria for classification (40 CFR Part 257). This regulation proposes minimum criteria for determining which solid waste land disposal facilities shall be classified as posing no reasonable probability of adverse effects on health or the environment.

(4) State hazardous waste program guidelines. These were proposed as 40 CFR Part 123, subparts A and B (44 FR 34298–34307, 6/14/79); Part 123 integrates the State hazardous waste program requirements with similar State regulations under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.), and the Safe Drinking Water Act (42 U.S.C. 300f et seq.). Part 123 describes the various provisions and capabilities a State hazardous waste program must have in order to qualify for full or interim authorization under the Act. Other regulations for hazardous waste management developed under subtitle C of the Act which should be considered are:

Section 3001: Identification and Listing—40 CFR 250 Subpart A (43 FR 58954–58968, 12/18/78).

Section 3002: Generator Standards—40 CFR 250 Subpart B (43 FR 58969–58975, 12/18/78).

Section 3003: Transporter Standards—40 CFR 250 Subpart C (43 FR 18506–18512, 4/28/78; see also the DOT proposal, 43 FR 22626–22634, 5/25/78).

Section 3004: Facility Standards—40 CFR 250 Subpart D (43 FR 58994–59022, 12/18/78).

Section 3005: Permits—40 CFR 122 and 124 Subparts A and B (44 FR 34267–34282, 34321–34328, 6/14/79).

Section 3010: Notification—40 CFR 250 Subpart G (43 FR 29908–29918, 7/11/78).

Section 3011: Grants—40 CFR 35 (42 FR 56050, 10/20/77; amended by 43 FR 43424, 9/25/78).

(5) Resource recovery facility guidelines (40 CFR Part 245). These guidelines apply to Federal agencies' planning and establishment of resource recovery facilities.

Coordination With Other Environmental Programs

Plans developed under these guidelines should be coordinated with guidelines, regulations and programs developed under other Federal environmental acts:

(1) *Water Quality Management.* Subpart F of these guidelines addresses the requirements for coordinating the State plan with programs under section 208 of the Clean Water Act, as amended (33 U.S.C. 1288). Section 208 provides for the identification of complex water quality problem areas and for the designation of areawide agencies in those areas to conduct water quality management planning. The State is responsible for such planning in all areas of the State for which an areawide agency has not been identified and for coordination of all water quality management activities within the State. As part of this effort, State and areawide agencies are to identify a process to control the disposition of all residuals (solid) waste which affects water quality. After completion of such planning, the governor is to designate agencies to implement various elements of the plan.

Subpart F discusses the need to consider water quality management agencies when making agency identifications for solid waste planning and implementation. It also discusses the need to establish coordination procedures when separate agencies are identified. The following types of coordination should take place:

(a) Use of a common data base (e.g. demographic and population projections and geogragphic boundaries);

(b) Use of compatible report formats, maps, scales, legends, and so forth;

(c) Formulation of consistent policies for sludge and residuals management;

(d) Coordinated identification of State legislative changes needed for implementation; and

(e) Coordination of program development, implementation strategies, and public participation programs.

(2) *Surface Impoundment Studies.* Section 1442(a)(8)(C) of the Safe Drinking Water Act, as amended (SDWA) (42 U.S.C. 300j–1) requires a study of the nature and extent of the impact on underground water of ponds, pools, lagoons, pits, or other surface disposal of contaminants in underground water recharge areas. In partial fulfillment of this requirements, EPA is conducting through grants to State agencies, an assessment of surface impoundments and their effects on ground water. Those impoundments which are identified as having the greatest potential for serious impact on ground water quality should be considered high priority for development of the open dump inventory to be conducted under the State solid waste plan. Such impoundments which are found to violate the disposal criteria issued under section 4004 should be listed in the inventory and be liable for closure or upgrading. Those surface impoundments that receive hazardous wastes are subject to the regulations for hazardous waste disposal facilities promulgated under subtitle C of the Act.

(3) *The National Pollutant Discharge Elimination System (NPDES).* Section 402 of the Clean Water Act, as amended (33 U.S.C. 1342) establishes the National Pollutant Discharge Elimination System (NPDES) governing discharge of pollutants into navigable waters. Permits issued under section 402 should be coordinated with hazardous waste and solid waste management permits, where applicable. Specifically, the plan should provide for necessary coordination with:

(a) State or Federal issuance of NPDES permits for facilities disposing or utilizing municipal waste water treatment sludge, including new facility permits and compliance schedules under existing permits.

(b) State or Federal issuance of NPDES permits for facilities disposing or utilizing industrial pollution control sludges, including new and existing facilities.

(c) State or Federal supervision of pretreatment programs requiring facilities to comply with requirements and compliance schedules before discharging into municipal sewer systems.

Several commentors incorrectly interpreted the proposed Guidelines to imply that all disposal facilities are to be covered by an NPDES permit. The NPDES program is only applicable to disposal facilities where operation of the facility involves the discharge of a pollutant to waters of the United States. The proposed guidelines required coordination of the open dump inventory with the NPDES permit program. While such coordination is advisable where possible, coordination with a planning tool such as the inventory is not as important as coordination between parallel regulatory activities. Therefore, these guidelines only require coordination between the State solid waste permitting activity (including the establishment of compliance schedules) and the NPDES program.

(4) *State Implementation Plans.* Several commentors stated that coordination with State Implementation Plans under the Clean Air Act should receive greater emphasis in these guidelines. Coordination with State Implementation Plans has been changed to a "requirement" from "a requirement, where practicable." Commentors also stated that the guidelines should emphasize the need for full and timely coordination of plans for resource recovery systems with the requirements of State Implementation Plans. This change has been made.

(5) *Coordination With Mining Regulatory Agencies.* Title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231) provides for the establishment of a fund for reclamation of abandoned mining lands. To be eligible to receive this funding, States must first develop an enforcement program for wastes from active mines, subject to the Department of the Interior and EPA approval (title V). All mine wastes must be disposed in accordance with performance standards to be promulgated by the Office of Surface Mining, Department of the Interior. Coordination between these EPA and Department of the Interior programs will facilitate the inventory of mining wastes and may increase the beneficial use of sludge as a soil conditioner in reclamation of abandoned lands.

(6) *Endangered and Threatened Species.* The proposed regulation required "coordination, where practicable" with programs administered by the Office of Endangered Species, Department of the Interior. In examining the Act and section 7 of the Endangered Species Act (16 U.S.C. 1530 et seq.), EPA concluded that these guidelines should address this issue more specifically. Sound solid waste management should include a sensitivity to the impact of solid waste collection, source separation, storage, transportation, transfer, processing, treatment and disposal on endangered and threatened species. Therefore, these guidelines require that the State plan provide for coordination with the Office of Endangered Species in order to ensure that solid waste management activities not jeopardize the continued existence of an endangered or threatened species nor result in the destruction or adverse modification of a critical habitat. The Office of Endangered Species has identified the species and habitats of concern in its regulations (50 CFR Part 17) implementing the Endangered Species Act.

EPA does not believe that it is appropriate to require more than coordination with endangered species programs in these guidelines. The States may need to employ differing administrative tools, from general policy statements to site-specific permit conditions, to provide protection of endangered species within their borders. EPA believes that the States must have the flexibility to determine, after consultation with Federal agencies concerned with this issue, the appropriate role of the State solid waste management plan in dealing with these issues. Such an approach is consistent with subtitle D, which relies heavily on State inititative, and which ultimately provides the greatest assurance of devising a solid waste management program which will be effective in protecting endangered and threatened species.

(7) *Dredge and Fill Permit Program.* Under section 404 of the Clean Water Act, as amended (CWA), the United States Army Corps of Engineers is responsible for the issuance of permits for the discharge of dredged or fill material into the Waters of the United States. States may assume responsibility for the issuance of permits if they have a program which satisfies requirements specified in section 404 of the CWA. States should attempt to coordinate the State plan with the dredge and fill permit program, particularly in regard to the siting of disposal facilities. To emphasize the importance of this program these guidelines require coordination with the Corps of Engineers (or the appropriate State agency) concerning the dredge and fill permit program.

(8) *Programs Affecting Indian Reservations.* Suggestions were received for coordination with areas not listed in these guidelines. Several commentors were particularly concerned about coordination with programs affecting Indian tribes and lands. EPA recognizes that improper disposal of solid waste on Indian lands can cause pollution both on and off the reservation. States with Indian lands should therefore address

solid waste management on these lands in accord with treaties and State policy. A provision has been added to subpart F to encourge coordination with tribal solid waste management programs. General wording has also added to subpart F to encourage the State to coordinate with any other Act or program area the State deems appropriate.

Subpart G—Public Participation

Under authority of section 7004(b) of the Act EPA is defining in these guidelines requirements for public participation in the development and implementation of State and substate plans. The requirements in these guidelines are supplemented by the requirements in 40 CFR Part 35 for solid waste program grants and by requirements in 40 CFR Part 25. Part 25 contains general public participation requirements for programs under the Solid Waste Disposal Act, as amended by RCRA, as well as for the programs under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.) and the Safe Drinking Water Act, as amended (42 U.S.C. 300f et seq.).

The guidelines consider public participation for plan development, annual work program development, regulation development, and permitting of facilities. The guidelines require the greatest public participation in development of the State plan. The State must hold a public hearing on the plan in addition to other general efforts at publicizing the content of the plan. The State also is to prepare a responsiveness summary describing how it responded to public comment on the plan. The guidelines require that the draft annual State work program be made available to the public and that the work program include a public participation work plan. In the development of State regulations the guidelines allow the States to choose between a public hearing as described in 40 CFR Part 25 or the applicable portions of State law or administative procedures. The guidelines require a public hearing on a facility permit if the State finds that there is a significant degree of public interest on the proposed permit.

Many comments were received on the requirement in these guidelines for an advisory group to assist with plan development and implementation. Several commentors stated that informal meetings or committees are a better means of obtaining public input on a solid waste management plan than formal advisory groups. Some States with formal advisory groups felt that the way their advisory groups are currently structured is more suitable than the way proposed by Part 25.

EPA recognizes these concerns and has deleted both the requirement for an advisory group and the requirement that existing groups conform to the Part 25 provisions. EPA does believe, however, that advisory groups can be an important aspect of the public consultation process and that their use should be encouraged in those States where they are effective. Therefore, these guidelines *recommend* the use of advisory groups. States considering the establishment of an advisory group are encouraged to examine the guidance for advisory group membership and responsibilities contained in Part 25.

On a related issue, several commentors felt the guidelines should encourage public education programs that inform the public about and encourage their interest in planning for solid waste management. EPA agrees, and a recommendation for public education programs has been included.

The requirement to hold a public hearing before approving a permit for a resource recovery or disposal facility generated more comments than any other issue. Commentors cited the high cost of holding hearings and the lack of public interest in many permits. A majority of States responding suggested providing an opportunity for a hearing, while some felt hearings should not be required for permit renewals. Some commentors felt that a hearing at the local level should suffice, and a few commentors stated that there should be no requirements for hearings on permits in these guidelines.

After considering these comments, EPA has revised this section to require a hearing when the State finds a significant degree of public interest on the proposed permit. This change will avoid burdening the State with the cost of a hearing where there is no public interest in a permit, while providing an opportunity for public participation in this important facet of the solid waste management process. EPA decided that permit renewals should not be exempt from this requirement because a revised permit may result in a significantly different environmental impact. The hearing or the decision on the need for such a hearing may be a State or local function depending on how the plan identifies responsibilities within the State.

It should be made clear that the guidelines only address public hearing requirements in permit proceedings. Under State or Constitutional law there may be a right to an adjudicatory, or "on the record", hearing prior to the imposition of legal sanctions. The guidelines do not address that issue.

Economic Impact

EPA has determined that this document does not require an economic impact analysis statement under Executive Order 12044 and OMB Circular A-107. The major economic impact of these guidelines is associated with the closure and upgrading of facilities in violation of the criteria for classification of solid waste disposal facilities (the Criteria, 40 CFR Part 257). The environmental impact statement prepared for the Criteria contains analysis of the cost of bringing facilities into compliance with the Criteria.

Dated: July 25, 1979.

Barbara Blum,

Acting Administrator.

Title 40 CFR is amended to add a new part 256 reading as follows:

PART 256—GUIDELINES FOR DEVELOPMENT AND IMPLEMENTATION OF STATE SOLID WASTE MANAGEMENT PLANS

Subpart A—Purposes, General Requirements, Definitions

Sec.

Subpart B—Identification of Responsibilities; Distribution of Funding

Subpart C—Solid Waste Disposal Programs

Subpart D—Resource Conservation and Resource Recovery Programs

Sec.

Authority: Sections 4002(b) and 4003 of the Solid Waste Disposal Act, as amended, Pub. L. 94–580; 90 Stat. 2813, 2814; 42 U.S.C. 6942(b), 6943.

Subpart A—Purpose, General Requirements, Definitions

§ 256.01 Purpose and scope of the guidelines.

(a) The purpose of these guidelines is to assist in the development and implementation of State solid waste management plans, in accordance with section 4002(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6942(b)) (the "Act"). These guidelines contain methods for achieving the objectives of environmentally sound management and disposal of solid and hazardous waste, resource conservation, and maximum utilization of valuable resources.

(b) These guidelines address the minimum requirements for approval of State plans as set forth in section 4003 of the Act. These are:

(1) The plan shall identify, in accordance with section 4006(b), (i) the responsibilities of State, local, and regional authorities in the implementation of the State plan, (ii) the distribution of Federal funds to the authorities responsible for development and implementation of the State plan, and (iii) the means for coordinating regional planning and implementation under the State plan.

(2) The plan shall, in accordance with section 4005(c), prohibit the establishment of new open dumps within the State, and contain requirements that all solid waste (including solid waste originating in other States, but not including hazardous waste) shall be (i) utilized for resource recovery or (ii) disposed of in sanitary landfills (within the meaning of section 4004(a)) or otherwise disposed of in an environmentally sound manner.

(3) The plan shall provide for the closing or upgrading of all existing open dumps within the State pursuant to the requirements of section 4005.

(4) The plan shall provide for the establishment of such State regulatory powers as may be necessary to implement the plan.

(5) The plan shall provide that no local government within the State shall be prohibited under State or local law from entering into long-term contracts for the supply of solid waste to resource recovery facilities.

(6) The plan shall provide for resource conservation or recovery and for the disposal of solid waste in sanitary landfills or for any combination of practices so as may be necessary to use or dispose of such waste in a manner that is environmentally sound.

(c) These guidelines address the requirement of section 4005(c) that a State plan:

> Shall establish, for any entity which demonstrates that it has considered other public or private alternatives for solid waste management to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, a timetable or schedule of compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed five years from the date of publication of the inventory).

§ 256.02 Scope of the State solid waste management plan.

(a)(1) The State plan shall address all solid waste in the State that poses potential adverse effects on health or the environment or provides opportunity for resource conservation or resource recovery. The plan shall consider:

(i) Hazardous wastes;
(ii) Residential, commercial and institutional solid waste;
(iii) Wastewater treatment sludge;
(iv) Pollution control residuals;
(v) Industrial wastes;
(vi) Mining wastes;
(vii) Agricultural wastes;
(viii) Water treatment sludge; and
(ix) Septic tank pumpings.

(2) The State plan shall consider the following aspects of solid waste management:

(i) Resource conservation;
(ii) Source separation;
(iii) Collection;
(iv) Transportation;
(v) Storage;
(vi) Transfer;
(vii) Processing (including resource recovery);
(viii) Treatment; and
(ix) Disposal.

(b) The State Plan shall establish and justify priorities and timing for actions. These priorities shall be based on the current level of solid waste management planning and implementation within the State, the extent of the solid waste management problem, the health, environmental and economic impacts of the problem, and the resources and management approaches available.

(c) The State plan shall set forth an orderly and manageable process for achieving the objectives of the Act and meeting the requirements of these guidelines. This process shall describe as specifically as possible the activities to be undertaken, including detailed schedules and milestones.

(d) The State plan shall cover a minimum of a five year time period from the date submitted to EPA for approval.

(e) The State plan shall identify existing State legal authority for solid waste management and shall identify modifications to regulations necessary to meet the requirements of these guidelines.

§ 256.03 State plan submission, adoption, and revision.

(a) To be considered for approval, the State plan shall be submitted to EPA within eighteen months after final promulgation of these guidelines.

(b) Prior to submission to EPA, the plan shall be adopted by the State pursuant to State administrative procedures.

(c) The plan shall be developed in accord with public participation procedures required by subpart G of this part.

(d) The plan shall contain procedures for revision. The State plan shall be revised by the State, after notice and public hearings, when the Administrator, by regulation, or the State determines, that:

(1) The State plan is not in compliance with the requirements of these guidelines;

(2) Information has become available which demonstrates the inadequacy of the plan; or

(3) Such revision is otherwise necessary.

(e) The State plan shall be reviewed by the State and, where necessary,

revised and readopted not less frequently than every three years.

§ 256.04 State plan approval, financial assistance.

(a) The Administrator shall, within six months after a State plan has been submitted for approval, approve or disapprove the plan. The Administrator shall approve a plan if he determines that:

(1) It meets the requirements of these guidelines which address sections 4003(1), (2), (3), and (5), and

(2) It contains provisions for revision pursuant to § 256.03.

(b) The Administrator shall review approved plans from time to time, and if he determines that revisions or corrections are necessary to bring such plan into compliance with all of the requirements of these guidelines, including the requirements which address sections 4003(4) and (6) and any new or revised requirement established by amendment to this part, he shall notify the State and provide an opportunity for such revisions and corrections and for an appeal and public hearing. If the plan continues to remain out of compliance, he shall withdraw his approval of such plan.

(c) Such withdrawal of approval shall cease to be effective upon the Administrator's determination that the State plan complies with the requirements of these guidelines.

(d) The Administrator shall approve a State application for financial assistance under subtitle D of the Act, and make grants to such State, if the Administrator determines that the State plan continues to be eligible for approval and is being implemented by the State.

(e) Upon withdrawal of approval of a State plan, the Administrator shall withhold Federal financial and technical assistance under subtitle D (other than such technical assistance as may be necessary to assist in obtaining reinstatement of approval) until such time as approval is reinstated. (Procedures for termination of financial assistance and for settlement of disputes are contained in 40 CFR 30, appendix A, articles 7 and 8.)

§ 256.05 Annual work program.

(a) The annual work program submitted for financial assistance under section 4008(a)(1) and described in the grant regulations (40 CFR Part 35) shall be reviewed by the Administrator in order to determine whether the State plan is being implemented by the State.

(b) The Administrator and the State shall agree on the contents of the annual work program. The Administrator will consider State initiatives and priorities, in light of the goals of the Act, in determining annual work programs for each State. The annual work program represents a State's obligation incurred by acceptance of financial assistance.

(c) Annual guidance for the development of State work programs will be issued by EPA. While this guidance will establish annual national priorities, flexibility will be provided in order to accommodate differing State priorities.

(d) The following documents developed under the State plan shall be included by reference in the annual work program:

(1) Substate solid waste management plans,

(2) Plans for the development of facilities and services, including hazardous waste management facilities and services,

(3) Evidence of actions or steps taken to close or upgrade open dumps.

(e) The annual work program shall allocate the distribution of Federal funds to agencies responsible for the development and implementation of the State plan.

§ 256.06 Definitions.

Terms not defined below have the meanings assigned them by section 1004 of the Act.

"The Act" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.).

"Criteria" means the "Criteria for Classification of Solid Waste Disposal Facilities", 40 CFR Part 257, promulgated under section 4004(a) of the Act.

"Facility" refers to any resource recovery system or component thereof, any system, program or facility for resource conservation, and any facility for collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste, including hazardous waste, whether such facility is associated with facilities generating such wastes or not.

"Implementation" means putting the plan into practice by carrying out planned activities, including compliance and enforcement activities, or ensuring such activities are carried out.

"Inactive facility" means a facility which no longer receives solid waste.

"Inventory of open dumps" means the inventory required under section 4005(b) and is defined as the list published by EPA of those disposal facilities which do not meet the criteria.

"Operator" includes facility owners and operators.

A "permit" is an entitlement to commence and continue operation of a facility as long as both procedural and performance standards are met. The term "permit" includes any functional equivalent such as a registration or license.

"Planning" includes identifying problems, defining objectives, collecting information, analyzing alternatives and determining necessary activities and courses of action.

"Provide for" in the phrase "the plan shall (should) provide for" means explain, establish or set forth steps or courses of action.

The term "shall" denotes requirements for the development and implementation of the State plan.

The term "should" denotes recommendations for the development and implementation of the State plan.

"Substate" refers to any public regional, local, county, municipal, or intermunicipal agency, or regional or local public (including interstate) solid or hazardous waste management authority, or other public agency below the State level.

Subpart B—Identification of Responsibilities; Distribution of Funding

§ 256.10 Requirements.

(a) In accordance with sections 4003(1) and 4006 and the interim guidelines for identification of regions and agencies for solid waste management (40 CFR Part 255), the State plan shall provide for:

(1) The identification of the responsibilities of State and substate (regional, local and interstate) authorities in the development and implementation of the State plan;

(2) The means of distribution of Federal funds to the authorities responsible for development and implementation of the State plan; and

(3) The means for coordinating substate planning and implementation.

(b) Responsibilities shall be identified for the classification of disposal facilities for the inventory of open dumps.

(c) Responsibilities shall be identified for development and implementation of the State regulatory program described in subpart C of this part.

(d) Responsibilities shall be identified for the development and implementation of the State resource conservation and resource recovery program described in subpart D of this part.

(e) State, substate and private sector responsibilities shall be identified for the planning and implementation of

solid and hazardous waste management facilities and services.

(f) Financial assistance under sections 4008(a) (1) and (2) shall be allocated by the State to State and substate authorities carrying out development and implementation of the State plan. Such allocation shall be based on the responsibilities of the respective parties as determined under section 4006(b).

§ 256.11 Recommendations.

(a) Responsibilities should be identified for each of the solid waste types listed in § 256.02(a)(1).

(b) Responsibilities should be identified for each of the aspects of solid waste management listed in § 256.02(a)(2).

(c) Responsibilities should be identified for planning and designating ground water use with respect to design and operation of solid waste disposal facilities.

(d) Responsibilities should be identified for the development and implementation of the authorized State hazardous waste management program under subtitle C of the Act.

(e) The State plan should include a schedule and procedure for the continuing review, reassessment and reassignment of responsibilities.

Subpart C—Solid Waste Disposal Programs

§ 256.20 Requirements for State legal authority.

In order to comply with sections 4003 (2) and (3), the State plan shall assure that the State has adequate legal authority to prohibit the establishment of new open dumps and to close or upgrade existing open dumps. The prohibition of the establishment of new open dumps shall take effect no later than six months after the date of promulgation of the criteria or on the date of approval of the State plan, whichever is later.

§ 256.21 Requirements for State regulatory powers.

In order to comply with section 4003(4), the State plan shall provide for the establishment of State regulatory powers. These powers:

(a) Shall be adequate to enforce solid waste disposal standards which are equivalent to or more stringent than the criteria for classification of solid waste disposal facilities (40 CFR Part 257). Such authority shall be as definitive as possible and clearly establish the means for compliance.

(b) Shall include surveillance capabilities necessary to detect adverse environmental effects from solid waste disposal facilities. Such capabilities shall include access for inspection and monitoring by regulatory officials and the authority to establish operator monitoring and reporting requirements.

(c) Shall make use of a permit program which ensures that the establishment of new open dumps is prohibited.

(d) Shall have administrative and judicial enforcement capabilities, including enforceable orders, fines or other administrative procedures, as necessary to ensure compliance.

§ 256.22 Recommendations for State regulatory powers.

In order to assist compliance with section 4003(4), the following are recommendations for State regulatory powers as may be necessary to prohibit new open dumps and close or upgrade all existing open dumps.

(a) Solid waste disposal standards:

(1) Should be based on the health and environmental impacts of disposal facilities.

(2) Should specify design and operational standards.

(3) Should take into account the climatic, geologic, and other relevant characteristics of the State.

(b) Surveillance systems should establish monitoring requirements for facilities.

(1) Every facility should be evaluated for potential adverse health and environmental effects. Based on this evaluation, instrumentation, sampling, monitoring, and inspection requirements should be established.

(2) Every facility which produces leachate in quantities and concentrations that could contaminate ground water in an aquifer should be required to monitor to detect and predict contamination.

(3) Inspectors should be trained and provided detailed instructions for checking on the procedures and conditions that are specified in the engineering plan and site permit. Provisions should be made to ensure chain of custody for evidence.

(c) Facility assessment and prescription of remedial measures should be carried out by adequately trained or experienced professional staff, including engineers and geologists.

(d) The State permit system should provide the administrative control to prohibit the establishment of new open dumps and to assist in meeting the requirement that all wastes be used or disposed in an environmentally sound manner.

(1) Permitting procedures for new facilities should require applicants to demonstrate that the facility will comply with the criteria.

(2) The permit system should specify, for the facility operator, the location, design, construction, operational, monitoring, reporting, completion and maintenance requirements.

(3) Permit procedures should include provisions to ensure that future use of the property on which the facility is located is compatible with that property's use as a solid waste disposal facility. These procedures should include identification of future land use or the inclusion of a stipulation in the property deed which notifies future purchasers of precautions necessitated by the use of the property as a solid waste disposal facility.

(4) Permits should only be issued to facilities that are consistent with the State plan, or with substate plans developed under the State plan.

(e) The enforcement system should be designed to include both administrative procedures and judicial remedies to enforce the compliance schedules and closure procedures for open dumps.

(1) Permits, surveillance, and enforcement system capabilities should be designed for supporting court action.

(2) Detection capabilities and penalties for false reporting should be provided for.

§ 256.23 Requirements for closing or upgrading open dumps.

In meeting the requirement of section 4003(3) for closing or upgrading open dumps:

(a) The State plan shall provide for the classification of existing solid waste disposal facilities according to the criteria. This classification shall be submitted to EPA, and facilities classified as open dumps shall be published in the inventory of open dumps.

(b) The State plan shall provide for an orderly time-phasing of the disposal facility classifications described in paragraph (a) of this section. The determination of priorities for the classification of disposal facilities shall be based upon:

(1) The potential health and environmental impact of the solid waste disposal facility;

(2) The availability of State regulatory and enforcement powers; and

(3) The availability of Federal and State resources for this purpose.

(c) For each facility classified as an open dump the State shall take steps to close or upgrade the facility. Evidence of that action shall be incorporated by reference into the annual work program and be made publicly available. When

the State's actions concerning open dumps are modified, the changes shall be referenced in subsequent annual work programs.

(d) In providing for the closure of open dumps the State shall take steps necessary to eliminate health hazards and minimize potential health hazards. These steps shall include requirements for long-term monitoring or contingency plans where necessary.

§ 256.24 Recommendations for closing or upgrading open dumps.

(a) All sources of information available to the State should be used to aid in the classification of facilities. Records of previous inspections and monitoring, as well as new inspections and new monitoring, should be considered.

(b) The steps to close or upgrade open dumps established under § 256.23(c) should be coordinated with the facility needs assessment described in § 256.41.

(c) A determination should be made of the feasibility of resource recovery or resource conservation to reduce the solid waste volume entering a facility classified as an open dump; and feasible measures to achieve that reduction should be implemented.

§ 256.25 Recommendation for inactive facilities.

Inactive facilities that continue to produce adverse health or environmental effects should be evaluated according to the criteria. The State plan should provide for measures to ensure that adverse health or environmental effects from inactive facilities are minimized or eliminated. Such measures may include actions by disposal facility owners and operators, notification of the general public, adjacent residents and other affected parties and notification of agencies responsible for public health and safety.

§ 256.26 Requirement for schedules leading to compliance with the prohibition of open dumping.

In implementing the section 4005(c) prohibition on open dumping, the State plan shall provide that any entity which demonstrates that it has considered other public or private alternatives to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, may obtain a timetable or schedule for compliance which specifies a schedule of remedial measures, and an enforceable sequence of actions, leading to compliance within a reasonable time (not to exceed 5 years from the date of publication of the inventory).

§ 256.27 Recommendation for schedules leading to compliance with the prohibition of open dumping.

In reviewing applications for compliance schedules under § 256.26, the State should consider the availability of processing and disposal facilities, the likelihood of environmental damage from disposal at available facilities, the existence of State or substate requirements (including other compliance schedules) applicable to available facilities, cost constraints, existing contractual agreements and other pertinent factors.

Subpart D—Resource Conservation and Resource Recovery Programs

§ 256.30 Requirements.

(a) In order to comply with sections 4003(2) and (6) as they pertain to resource conservation and recovery, the State plan shall provide for a policy and strategy for encouragement of resource recovery and conservation activities.

(b) In order to comply with section 4003(5), the State plan shall provide that no local government within the State is prohibited under State or local law from entering into long-term contracts for the supply of solid waste to resource recovery facilities.

§ 256.31 Recommendations for developing and implementing resource conservation and recovery programs.

(a) In order to encourage resource recovery and conservation, the State plan should provide for technical assistance, training, information development and dissemination, financial support programs, market studies and market development programs.

(b) In order to comply with the requirement of § 256.30(b) regarding long-term contract prohibitions, the State plan should provide for:

(1) Review of existing State and local laws and regulations pertinent to contracting for resource recovery services or facilities.

(2) Reporting of all laws and regulations found to be in violation of this requirement to the executive officer of the administrative agency responsible for the statute.

(3) Development of an administrative order or a revised law or regulation or any other preliminary step for the removal or amending of a law or regulation in violation of this requirement.

(4) Development of a strategy for the consideration of the legislature to prohibit and/or remove from State or local law provisions in violation of this requirement.

(c) The State plan should aid and encourage State procurement of products containing recovered materials in accord with section 6002 of the Act. To assist this effort, the State plan should provide for:

(1) The development of a policy statement encouraging the procurement of recovered materials, wherever feasible;

(2) The identification of the key purchasing agencies of the State, along with potential uses of recovered materials by these agencies; and,

(3) The development of a plan of action to promote the use of recovered materials through executive order, legislative initiative, or other action that the State deems necessary.

(d) In order to encourage resource recovery and conservation, the State plan should provide for the elimination, to the extent possible, of restrictions on the purchase of goods or services, especially negotiated procurements, for resource recovery facilities. This should include:

(1) Review of existing State and local laws pertinent to the procurement of equipment and services for the design, construction and operation of resource recovery facilities;

(2) Listing of all laws that limit the ability of localities to negotiate for the procurement of the design, construction, or operation of resource recovery facilities;

(3) Development of administrative orders or legislation or other action that would eliminate these restrictions; and

(4) Development of a strategy and plan of action for the consideration of the legislature for execution of administrative orders or other action that would eliminate these restrictions.

(e) The State plan should encourage the development of resource recovery and resource conservation facilities and practices as the preferred means of solid waste management whenever technically and economically feasible. The State plan should provide for the following activities:

(1) The composition of wastes should be analyzed with particular emphasis on recovery potential for material and energy, including fuel value, percentages of recoverable industrial wastes, grades of wastepaper, glass, and non-ferrous and ferrous metals.

(2) Available and potential markets for recovered materials and energy should be identified, including markets for recoverable industrial wastes; wastepapers; ferrous and non-ferrous metals; glass; solid, liquid, or gaseous fuels; sludges; and tires. The following should be evaluated: location and

transportation requirements, materials and energy specifications of user industries, minimum quantity requirements, pricing mechanisms and long-term contract availability.

(3) Resource recovery feasibility studies should be conducted in regions of the State in which uses or markets for recovered materials or energy are identified. These studies should review various technological approaches, environmental considerations, institutional and financial constraints, and economic feasibility.

(4) Source separation, recycling and resource conservation should be utilized whenever technically and economically feasible.

(5) Mixed waste processing facilities for the recovery of energy and materials should be utilized whenever technically and economically feasible.

(6) Source separation, resource conservation and mixed waste processing capacity should be combined to achieve the most effective resource conservation and economic balance.

Subpart E—Facility Planning and Implementation

§ 256.40 Requirements.

In order to comply with section 4003(6), the State plan shall provide for adequate resource conservation, recovery, storage, treatment and disposal facilities and practices necessary to use or dispose of solid and hazardous waste in an environmentally sound manner.

§ 256.41 Recommendations for assessing the need for facilities.

(a) In meeting the requirement for adequate resource conservation, recovery, storage, treatment and disposal facilities and practices, the State plan should provide for an assessment of the adequacy of existing facilities and practices and the need for new or expanded facilities and practices.

(1) The needs assessment should be based on current and projected waste generation rates and on the capacities of presently operating and planned facilities.

(2) Existing and planned resource conservation and recovery practices and their impact on facility needs should be assessed.

(3) Current and projected movement of solid and hazardous waste across State and local boundaries should be assessed.

(4) Special handling needs should be determined for all solid waste categories.

(5) Impact on facility capacities due to predictable changes in waste quantities and characteristics should be estimated.

(6) Environmental, economic, and other constraints on continued operation of facilities should be assessed.

(7) Diversion of wastes due to closure of open dumps should be anticipated.

(8) Facilities and practices planned or provided for by the private sector should be assessed.

(b) The State plan should provide for the identification of areas which require new capacity development, based on the needs assessment.

§ 256.42 Recommendations for assuring facility development.

(a) The State plan should address facility planning and acquisition for all areas which are determined to have insufficient recovery, storage, treatment and disposal capacity in the assessment of facility needs.

(b) Where facilities and practices are found to be inadequate, the State plan should provide for the necessary facilities and practices to be developed by responsible State and substate agencies or by the private sector.

(c) For all areas found to have five or fewer years of capacity remaining, the State plan should provide for:

(1) The development of estimates of waste generation by type and characteristic,

(2) The evaluation and selection of resource recovery, conservation or disposal methods,

(3) Selection of sites for facilities, and

(4) Development of schedules of implementation.

(d) The State plan should encourage private sector initiatives in order to meet the identified facility needs.

(e) In any area having fewer than 2 years of projected capacity, the State plan should provide for the State to take action such as acquiring facilities or causing facilities to be acquired.

(f) The State plan should provide for the initiation and development of environmentally sound facilities as soon as practicable to replace all open dumps.

(g) The State plan should provide for the State, in cooperation with substate agencies, to establish procedures for choosing which facilities will get priority for technical or financial assistance or other emphasis. Highest priority should be given to facilities developed to replace or upgrade open dumps.

(h) The State plan should provide for substate cooperation and policies for free and unrestricted movement of solid and hazardous waste across State and local boundaries.

Subpart F—Coordination With Other Programs

§ 256.50 Requirements.

Section 4003(1) requires the State solid waste managment plan to identify means for coordinating regional planning and implementation under the State plan. Section 1006 requires the Administrator to integrate all provisions of this Act (including approval of State plans) with other Acts that grant regulatory authority to the Administrator in order to prevent duplication of administrative and enforcement efforts. In order to meet these requirements:

(a) The State solid waste management plan shall be developed in coordination with Federal, State, and substate programs for air quality, water quality, water supply, waste water treatment, pesticides, ocean protection, toxic substances control, noise control, and radiation control.

(b) The State plan shall provide for coordination with programs under section 208 of the Clean Water Act, as amended (33 U.S.C. 1288). In identifying agencies for solid waste management planning and implementation, the State shall review the solid waste management activities being conducted by water quality planning and management agencies designated under section 208 of the Clean Water Act. Where feasible, identification of such agencies should be considered during the identification of responsibilities under subpart B of this part. Where solid waste management and water quality agencies are separate entities, necessary coordination procedures shall be established.

(c) The State plan shall provide for coordination with the National Pollutant Discharge Elimination System (NPDES) established under section 402 of the Clean Water Act, as amended (33 U.S.C. 1342). The issuance of State facility permits and actions taken to close or upgrade open dumps shall be timed, where practicable, to coordinate closely with the issuance of a new or revised NPDES permit for such facility.

(d) The State plan shall provide for coordination with activities for municipal sewage sludge disposal and utilization conducted under the authority of section 405 of the Clean Water Act, as amended (33 U.S.C. 1345), and with the program for construction grants for publicly owned treatment works under section 201 of the Clean Water Act, as amended (33 U.S.C. 1281).

(e) The State plan shall provide for coordination with State pretreatment

activities under section 307 of the Clean Water Act, as amended (33 U.S.C. 1317).

(f) The State plan shall provide for coordination with agencies conducting assessments of the impact of surface impoundments on underground sources of drinking water under the authority of section 1442(a)(8)(C) of the Safe Drinking Water Act (42 U.S.C. 300j-1).

(g) The State plan shall provide for coordination with State underground injection control programs (40 CFR Parts 122, 123, 124, and 146) carried out under the authority of the Safe Drinking Water Act (42 U.S.C. 300f et seq.) and with the designation of sole source aquifers under section 1424 of that Act.

(h) The State plan shall provide for coordination with State implementation plans developed under the Clean Air Act (42 U.S.C. 7401 et seq.; incineration and open burning limitations; and, State implementation plan requirements impacting resource recovery systems).

(i) The State plan shall provide for coordination with the Army Corps of Engineers permit program (or authorized State program) under section 404 of the Clean Water Act, as amended (33 U.S.C. 1344) for dredge and fill activities in waters of the United States.

(j) The State plan shall provide for coordination with the Office of Endangered Species, Department of the Interior, to ensure that solid waste management activities, especially the siting of disposal facilities, do not jeopardize the continued existence of an endangered or threated species nor result in the destruction or adverse modification of a critical habitat.

(k) The State plan shall provide for coordination, where practicable, with programs under:

(1) The Toxic Substances Control Act (15 U.S.C. 2601 et seq.; disposal of chemical substances and mixtures).

(2) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 1362 et seq.; disposal and storage of pesticides and pesticide containers).

(3)The Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1420 et seq.; disposal in ocean waters).

(l) The State plan shall provide for coordination, where practicable, with programs of other Federal agencies, including:

(1) Department of the Interior.

(i) Fish and Wildlife Service (wetlands).

(ii) Bureau of Mines and Office of Surface Mining (mining waste disposal and use of sludge in reclamation).

(iii) U.S. Geological Survey (wetlands, floodplains, ground water);

(2) Department of Commerce, National Oceanic and Atmospheric Administration (coastal zone management plans);

(3) Water Resources Council (floodplains, surface and ground waters);

(4) Department of Agriculture, including Soil Conservation Service (land spreading solid waste on food chain croplands);

(5) Federal Aviation Administration (locating disposal facilities on or near airport property);

(6) Department of Housing and Urban Development (701 comprehensive planning program, flood plains mapping);

(7) Department of Defense (development and implementation of State and substate plans with regard to resource recovery and solid waste disposal programs at various installations);

(8) Department of Energy (State energy conservation plans under the Energy Policy and Conservation Act (42 U.S.C. 6321)); and

(9) Other programs.

(m) The State plan shall provide for coordination, where practicable, with solid waste management plans in neighboring States and with plans for Indian reservations in the State.

Subpart G—Public Participation

§ 256.60 Requirements for public participation in State and substate plans.

(a) State and substate planning agencies shall:

(1) Maintain a current list of agencies, organizations, and individuals affected by or interested in the plan;

(2) Provide depositories of relevant information in one or more convenient locations; and

(3) Prepare a responsiveness summary, in accord with 40 CFR Part 25.8, where required by this subpart or by an approved public participation work plan, which describes matters on which the public was consulted, summarizes the public's views, and sets forth the agency's response to the public input.

(b) State and substate planning agencies shall provide information and consult with the public on plan development and implementation. Provision of information and consultation shall occur both early in the planning process (including the preparation and distribution of a summary of the proposed plan) and on major policy decisions made during the course of plan development, revision and implementation. To meet this requirement, planning agencies shall:

(1) Publicize information in news media having broad audiences in the geographic area;

(2) Place information in depositories maintained under paragraph (a)(2) of this section;

(3) Send information directly to agencies, organizations and individuals on the list maintained under paragraph (a)(1) of this section; and

(4) Prepare and make available to the public a responsiveness summary in accord with 40 CFR Part 25.8.

(c) State and substate planning agencies shall conduct public hearings (and public meetings, where the agency determines there is sufficient interest) in accord with 40 CFR Parts 25.5 and 25.6. The purpose of the hearings and meetings is to solicit reactions and recommendations from interested or affected parties and to explain major issues within the proposed plan. Following the public hearings, a responsiveness summary shall be prepared and made available to the public in accord with 40 CFR Part 25.8.

§ 256.61 Requirements for public participation in the annual State work program.

(a) A public participation work plan in accord with 40 CFR Part 25.11 shall be included in the annual State work program.

(b) The State shall consult with the public in the development of the annual work program. One month prior to submission of the draft work program to the Regional Administrator, as required by 40 CFR Part 35, the draft work program shall be made available to the public at the State information depositories maintained under § 256.60(a)(2). The public shall be notified of the availability of the draft work program, and a public meeting shall be held if the planning agency determines there is sufficient interest.

(c) The State shall comply with the requirements of Office of Management and Budget Circular No. A-95.

(d) Copies of the final work program shall be placed in the State information depositories maintained under § 256.60(a)(2).

§ 256.62 Requirements for public participation in State regulatory development.

(a) The State shall conduct public hearings (and public meetings where the State determines there is sufficient interest) on State legislation and regulations, in accord with the State administrative procedures act, to solicit reactions and recommendations. Following the public hearings, a

responsiveness summary shall be prepared and made available to the public in accord with 40 CFR Part 25.8.

(b) In advance of the hearings and meetings required by paragraph (a) of this section, the State shall prepare a fact sheet on proposed regulations or legislation, mail the fact sheet to agencies, organizations and individuals on the list maintained under § 256.60(a)(1) and place the fact sheet in the State information depositories maintained under § 256.60(a)(2).

§ 256.63 Requirements for public participation in the permitting of facilities.

(a) Before approving a permit application (or renewal of a permit) for a resource recovery or solid waste disposal facility the State shall hold a public hearing to solicit public reaction and recommendations on the proposed permit application if the State determines there is a significant degree of public interest in the proposed permit.

(b) This hearing shall be held in accord with 40 CFR Part 25.5.

§ 256.64 Recommendations for public participation.

(a) State and substate planning agencies should establish an advisory group, or utilize an existing group, to provide recommendations on major policy and program decisions. The advisory group's membership should reflect a balanced viewpoint in accord with 40 CFR Part 25.7(c).

(b) State and substate planning agencies should develop public education programs designed to encourage informed public participation in the development and implementation of solid waste management plans.

(c) The State should inform all affected parties of the classification of a facility as an open dump, in accord with § 256.22(a), prior to publication of that facility by EPA on the open dump inventory.

[FR Doc. 79-23471 Filed 7-30-79; 8:45 am]
BILLING CODE 6560-01-M

Federal Register

Tuesday
July 31, 1979

Part IV

Department of Health, Education, and Welfare

National Institutes of Health

Recombinant DNA Research; Meeting and Actions Under Guidelines

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Conference Room 10, Building 31C, Bethesda, Maryland 20205, on September 6–7, 1979, from 9:00 a.m. to 5:00 p.m. This meeting will be open to the public on September 6 from 9 a.m. to 5 p.m., and September 7, from 9 a.m. to 3 p.m., to discuss:

Proposed procedures for the Recombinant DNA Advisory Committee

Proposed procedures for approval of large-scale experiments

Prokaryote host-vectors other than *E. coli* K–12

Large-scale experiments

Amendment of Guidelines

Proposed exemption under I–E–5 for *E. coli* K–12 host-vector systems

Exemptions for organisms that exchange genetic information (I–E–4)

E. coli host-vector Systems

NIH risk-assessment plan

Reports of Plasmid and Phage Subcommittees

Review of protocols for required containment levels

Other matters requiring necessary action by the Committee.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(4), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 7 from 3 p.m. to 5 p.m. for the review, discussion and evaluation of a proposal from a commercial concern for scale-up of recombinant DNA experiments. This proposal and the discussions could reveal confidential trade secrets or commercial property such as patentable material.

Dr. William J. Gartland, Jr., Executive Secretary, Recombinant DNA Advisory Committee, National Insitutes of Health, Building 31, Room 4A52, telephone 301–496–6051, will provide materials to be discussed at the meeting, rosters of committee members and substantive program information. A summary of the meeting will be available at a later date.

Dated: July 25, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79–23549 Filed 7–30–79; 8:45 am]

BILLING CODE 4110–08–M

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHEW.

ACTION: Notice of proposed actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth the proposals for actions to be taken under the 1978 NIH Guidelines for Research Involving Recombinant DNA Molecules [Federal Register of December 22, 1978 (43 FR 60108)]. Interested parties are invited to submit comments concerning these proposals. After consideration of these proposals and comments by the NIH Recombinant DNA Advisory Committee (RAC) at its September 6–7, 1979, meeting, the Director of the National Institutes of Health will issue decisions on these proposals in accord with the Guidelines.

DATE: Comments must be received by August 30, 1979.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, Building 31, Room 4A52, National Institutes of Health, Bethesda, Maryland 20205. All comments received in timely responses to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Drs. Michael Resnick or Stanley Barban, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–6051.

SUPPLEMENTARY INFORMATION: The National Institutes of Health will consider the following changes and amendments under the Guidelines for Research Involving Recombinant DNA Molecules (43 FR 60108), as well as actions under these Guidelines.

1. *Proposed Exemption for E. coli K–12 Host-Vector Systems.* The RCA Working Group on *E. coli* K–12 host-vector systems will report to the full committee for discussion/action documentation for a proposed exemption under I–E–5 of the Guidelines for experiments involving EK1 and EK2 host-vector systems. This proposed action would exempt certain categories of recombinant DNA molecules in addition to those already stated in Sections 1–E–1 to –4. The proposed exemption is as follows:

Those recombinant DNA molecules that are propagated in *E. coli* K–12 hosts not containing conjugation-proficient plasmids or generalized transducing phages, when lambda or lambdoid bacteriophages or non-conjugative plasmids are used as vectors, can be handled at P1 and are exempted from the Guidelines.

2. *Use of Agrobacterium tumefaciens as a Host-Vector System.* At its May 21–23, 1979 meeting, the RAC recommended approval, at the P3 level of physical containment, of specific experiments involving introduction of well-characterized fragments of eukaryotic DNA into *Agrobacterium tumefaciens* carrying a Ti plasmid, using an EK2 plasmid vector coupled to a gragment of the Ti plasmid and/or the origin of replication of a cryptic *A. tumefaciens,* plasmid, and introduction of these bacteria into plant parts or cells in culture under P3 conditions. Approval is now requested by Dr. M. D. Chilton for modification of the experimental procedure as follows:

Cloned desired fragments from any non-prohibited source may be transferred into *Agrobacterium tumefaciens* containing a Ti plasmid (or directives thereof), using a nonconjugative *E. coli* plasmid vector coupled to a fragment of the Ti plasmid and/or the origin of replication of an *Agrobacterium* plasmid, under containment conditions one step higher than would be required for the desired DNA in EK1 or HV1 systems. Transfer into plant parts or cells in culture would be permitted at the same containment level (one step higher).

The modification involves two changes: (1) it would extend the range of desired DNA fragments to be studied, including prokaryotic DNA, synthetic DNA, and eukaryotic DNA, that are not yet judged to be "well-characterized"; (2) it would make the containment level variable, depending upon the nature of the desired DNA to be studied. The requirement of P3 containment conditions for all experiments in this category seems inconsistent and arbitrary.

3. *Proposed Exemption for Pseudomonas putida and Pseudomonas fluorescens under Section I–E–4.* Dr. N. Ornston of Yale University has proposed, in accord with Section I–E–4 of the Guidelines, that *Pseudomonas putida* and *Pseudomonas fluorescens* be added to the exempt list in Appendix A of gram-negative organisms that

exchange DNA by known physiological processes. Further information documenting the exchange of genetic information between these two species and those in Appendix A is available from the Office of Recombinant DNA Activities.

4. *Cloning in Bacillus subtilis an Streptomyces coelicolor.* Dr. Stanley Cohen of Stanford University has proposed the following actions:

(a) *Bacillus subtilis* strains that do not carry an asporogenic mutation can be used as hosts specifically for the cloning of DNA derived from *E. coli* K–12 and *Streptomyces coelicolor* using NIH-approved *Staphylococcus aureus* plasmids as vectors under P2 conditions.

(b) *Streptomyces coelicolor* can be used as a host for the cloning of DNA derived from *B. subtilis, E. coli* K–12, or from *S. aureus* vectors that have been approved for use in *B. subtilis* under P2 conditions.

5. *Proposed Amendment of Sections II–D–1–a–(1) and III–A–1–b–(1).* Dr. Nickolas Panopoulos of the University of California, Berkeley has proposed amendments of sections II–D–1–a–(1) and III–A–1–b–(1).

The proposed revised sections are as follows (new text appears in italics):

II–D–1–a. *HV1.* A host-vector system which provides a moderate level of containment. *Specific systems:*

II–D–1–a–(1). *EK1.* The host is always *E. coli* K–12 or a derivative thereof, and the vectors include non-conjugative plasmids (e.g., pSC101, Co1E1, or derivatives thereof [21–27] and variants of bacteriophage, such as λ [28–33]. The *E. coli* K–12 hosts shall not contain conjugation-proficient plasmids, whether autonomous or integrated, or generalized transducing phages *except as specified under Section III–A–1–b–(1).*

III–A–1–b. *Prokaryotic DNA Recombinants.*

III–A–1–b–(1). *Prokaryotes That Exchange Genetic Information* [35] *with E. coli.* Those prokaryotes that exchange genetic information with *E. coli* by known physiological processes will be exempted from these Guidelines if they appear on the "list of exchangers" set forth in Appendix A (see Section I–E–4).

For those not on the list, the containment levels are P1 physical containment + and EK1 host-vector.

In fact, experiments in this category may be performed with any *E. coli* K–12 vector (e.g., conjugative plasmids). However, for prokaryotes that are classified [1] as Class 2, the containment levels are P2 + EK1.

When a non-conjugative vector is used, the E. coli K–12 host may contain conjugative proficient plasmids, either autonomous or integrated, or generalized transducing phages. In general, for experiments in this category, the E. coli K–12 host may contain such plasmids or phages provided that the physical containment level is raised one step.

Additional major actions will appear in a subsequent issue of the Federal Register.

Dated: July 24, 1979.

Donald S. Fredrickson,

Director, National Institutes of Health.

[FR Doc. 79-23550 Filed 7-30-79; 8:45 am]

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Federal Register

Tuesday
July 31, 1979

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Child Welfare Provisions

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 13

Tribal Reassumption of Jurisdiction Over Child Custody Proceedings

July 24, 1979.

AGENCY: Bureau of Indian Affairs.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is adding a new part to its regulations to establish procedures by which an Indian tribe may reassume jurisdiction over Indian child custody proceedings as authorized by the Indian Child Welfare Act, Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C. 1918.

DATE: This rule becomes effective August 30, 1979.

FOR FURTHER INFORMATION CONTACT: David Etheridge, Office of the Solicitor, Division of Indian Affairs, Department of the Inderior, 18th and C Streets, NW., Washington, D.C. 20240; (202) 343-6967.

SUPPLEMENTARY INFORMATION: The authority for issuing these regulations is contained in 25 U.S.C. 1952 and 209 DM 8. This new part was published as proposed rules on April 23, 1979, 44 FR 23992. The comment period on the proposed rules closed on May 23, 1979. Comments were reviewed and considered and changes were made where appropriate.

A. Changes made due to comments received

(1) Section 13.1 has been modified in response to comments urging additional clarification to assure that tribes may reassume jurisdiction without relinquishing their legal arguments that they already had such jurisdiction. One federal district court has ruled that Public Law 83-280 did not deprive tribes of jurisdiction, but merely conferred concurrent jurisdiction on the state. *Confederated Tribes of the Colville Reservation* vs. *Beck*, C-78-76 (E. D. Wash, December 13, 1978). Additionally, disputes continue to exist over whether particular statutes authorizing the sale of certain tribal lands had the effect of transferring to the state jurisdiction over those lands that are sold. *See e.g., United States* vs. *Juvenile*, 453 F. Supp. 1171 (D. S. D. 1978).

(2) Section 13.1 has also been modified to reflect the variety of jurisdictional arrangements authorized by the Indian Child Welfare Act. Where both the tribe and the state currently assert or exercise jurisdiction over the same Indian child custody disputes, the tribe may obtain exclusive jurisdiction. If a state is asserting exclusive jurisdiction, the tribe may take over all jurisdiction or simply obtain jurisdiction concurrent with the state. Additionally, a tribe may reassume partial jurisdiction limited to only certain types of cases. For example, it could take jurisdiction over only a portion of its former reservation area or only over cases referred to it by state courts as authorized under 25 U.S.C. 1918(2).

(3) In response to a comment, specific reference is made to Oklahoma to reflect the intent of Congress, which is clearly stated in the legislative history, that the right to reassume jurisdiction be available to Oklahoma tribes.

(4) A comment that a specific provision be included to authorize groups of tribes to join together so they can pool resources to develop a feasible plan for reassumption of jurisdiction has been adopted as subsection (c). The Act places no restrictions on how tribes organize to assume jurisdiction so long as the final result is a feasible plan. The consortium approach has already been successfully used by tribes in the Northwest and in Nevada. Under such an approach a single court may be designated by several tribes as their tribal court.

(5) In response to a comment, provision has been made for land or communities that acquire reservation status after reassumption of jurisdiction. New subsection (e) states that such land or communities automatically become subject to tribal jurisdiction unless the petition for reassumption specifically states that it does not apply to lands or communities that subsequently acquire reservation status.

(6) Section 13.11 has been modified to delete requirements for information concerning the reservation when a tribe wishes to assume only referral jurisdiction under 25 U.S.C. 1911(b). Such information is not needed for referral jurisdiction since that jurisdiction is not dependent on residence or domicile on a reservation.

(7) A comment that the phrase "clear and definite" be substituted for the word "legal" in referring to the description of the reservation has been adopted. Commenters objected that some tribes may have difficulty meeting the requirements of preparing a "legal description" of the boundaries. The purpose of this requirement is simply to inform the public and government officials what territory is subject to tribal jurisdiction so that uncertainty over this issue will not delay the resolution of child custody matters by the proper court. A "clear and definite" description of the boundaries will suffice for that purpose.

(8) Several commenters objected to the use of the term "judicial system" because it could be construed to be not as broad as the definition of "tribal court" in 25 U.S.C. 1903(12), which includes any "administrative body of a tribe which is vested with authority over child custody proceedings." The use of the term "adjudicate" was considered objectionable for the same reason. The final rules have been revised in light of these comments by referring to a "tribal court as defined in 25 U.S.C. 1903(12)" rather than a "judicial system" and replacing the phrase "adjudicate child custody disputes" with "exercise jurisdiction over Indian child custody matters."

(9) Some commenters said they thought the phrase "persons with a legitimate interest in a child custody proceeding," which was used to describe those persons who would be able to ascertain from the tribe whether a particular child is a member or eligible for membership, is too vague. Accordingly, that phrase has been changed to "a participant in an Indian child custody proceeding."

(10) One commenter pointed out that some tribes operate without any constitution or other form of governing document. Accordingly, the words "if any" have been added after the phrase "constitution or other governing document."

(11) Comments were also made regarding the requirement that the plan provide information concerning court funding. These objections were based on concern that an impasse might develop in which funding would be contingent on reassumption of jurisdiction and reassumption of jurisdiction contingent on funding. If funds will become available when the tribe reassumes jurisdiction, those funds may be listed in the plan. This provision has been modified to make it clear that such funds may be included. This requirement has been retained because availability of funding to implement the reassumption plan is an essential element of feasibility.

(12) Some commenters also objected to the requirement that the plan state how many tribal members there are and how many Indians live on the affected territory. In part, these objections arise due to difficulty some tribes may have in arriving at precise figures. Accordingly, these provisions have been modified to permit estimates where necessary.

(13) One commenter pointed out that the number residing on a tribe's

reservation is irrelevant if the tribe is petitioning only for referral jurisdiction. Therefore, the requirement for that information, for referral jurisdiction only, has been deleted. The requirement that information be provided concerning the number of persons that will become subject to the tribe's jurisdiction and the number of child custody cases expected, has been retained because it is needed to evaluate whether the plan is adequate. Population is one of the specific factors listed by Congress as appropriate for consideration in making a feasibility determination. See 25 U.S.C. 1918(b)(iii).

(14) Many commenters objected to the requirement for a description of support services that will be available to the tribe or tribes when jurisdiction is reassumed. Some feared that the Bureau would only consider those resources normally employed by traditional social service agencies and would not consider special non-institutional resources available uniquely to the tribe. This provision has been modified to make it clear that such a narrow construction of "support services" is not intended. There was also concern expressed that this provision might effectively preclude poorer tribes from reassuming jurisdiction. The listing of support services may include any services available to the tribe regardless of who funds or operates them. The section has been revised to make this point clearer. States, of course, continue to have the same obligations towards Indians residing within their borders as they have to other citizens under the Fourteenth Amendment to the United States Constitution. Some state services, however, may become less available after reassumption of jurisdiction simply because tribal courts lack the jurisdiction that many state courts have to compel state agencies to provide support services. If reassumption of jurisdiction creates a problem in this regard, the tribal plan should state how the tribe plans to deal with it.

(15) A number of comments were received concerning the requirement in § 13.12 that the affected territory must have been previously subject to tribal jurisdiction. Commenters pointed out that such a requirement would exclude lands and communities that acquired reservation status after passage of legislation giving the state jurisdiction. This subsection has been revised to require only that the land be a reservation as defined in the Act and that it be presently occupied by the tribe.

(16) Paragraph (a)(4) has been modified by using the term "tribal court, as defined in 25 U.S.C. 1903(12)," to assure that tribes have as much freedom as possible in establishing procedures.

(17) One commenter objected to paragraph (a)(5) requiring a tribe to have available support services for *any child* who must be removed from the parents as it imposes a heavy burden on tribes since just one severely handicapped child may require extraordinary assistance, the availability of which the tribe may not be able to establish in advance. This provision has been modified to require only that support services be available for *most children.* Tribes, like states, can make special arrangements when especially difficult cases arise. There will be no requirement for an advance showing that facilities are available for the most severe problems. Also, in response to comments, paragraph (a)(5) has been revised to require only that services be in place by the time of reassumption. They need not be in place before that time.

(18) Paragraph (a)(6) has been modified to require only that a procedure be established for identifying persons who will be subject to the tribe's jurisdiction rather than for identifying all tribal members. The Act contemplates that jurisdiction may be reassumed, if the tribe wishes, only over a portion of the total membership of the tribe. Where the reassumption of jurisdiction is so limited, a procedure is needed only to identify those members or persons eligible for membership who will become subject to tribal jurisdiction.

(19) Upon the recommendation of one commenter, a new subsection (b) has been added specifically providing for assistance by the Department to a tribe that may wish to reassume partial jurisdiction if it is unable to develop a feasible plan for total reassumption of jurisdiction. The subsection also provides for Departmental assistance in negotiating agreements with the state under 25 U.S.C. 1919.

(20) In response to comments on § 13.14(b) copies of the notice of reassumption of jurisdiction will be sent to the governor and the highest court in the state as well as the attorney general of the affected state or states to improve the likelihood that all affected state agencies are informed of the change in jurisdiction.

(21) In response to comments on § 13.15 responsibility for the initial decision has been shifted from the Secretary to the Assistant Secretary—Indian Affairs. This change has been made to provide for an administrative appeal before a decision is made that is final for the Department and reviewable in the federal court.

B. Changes not adopted

(1) Some commenters objected to requiring the citation of the statute or statutes which have provided the basis for state assertion of jurisdiction. The objection is based on concern that citation of such a statute might be construed as an admission that state assertion of jurisdiction was legally authorized. The language of this requirement has been modified to make it more clear that it is the state—not necessarily the tribe—which asserts that a particular statute granted the state jurisdiction. This requirement has been retained because it is good legislative practice to know what statutes may be affected when taking action that may result in their effective repeal.

(2) One commenter recommended language to the effect that these regulations establish the right of tribes to reassume jurisdiction. This recommendation has not been adopted because it is the statute—not these regulations—which establishes that right. The regulations merely provide a procedure by which a tribe can exercise the right established in the statute.

(3) A comment recommending use of the term "assertion of exclusive jurisdiction" instead of "reassumption of jurisdiction" has not been adopted. "Reassumption of jurisdiction" is the term used by the Act and it would be unnecessarily confusing to use a different term in the regulations. The concern of the commenter that the term "reassumption" might implicitly concede that the reservation of a petitioning tribe has ever been subject to exclusive state jurisdiction is effectively answered by the explicit language of the section. A tribe need not admit that a state actually has jurisdiction. A petition may be filed if a state has been asserting jurisdiction, regardless of whether such assertion is valid.

(4) A comment that the regulations provide that tribes may regain jurisdiction lost because of a federal adjudication has not been adopted. Section 108 of the Act authorizes reassumption only when jurisdiction has been conferred on a state pursuant to a law. Strictly speaking, jurisdiction is not conferred on a state through court decisions. The decisions simply conclude that a certain law has caused a transfer in jurisdiction.

(5) A comment that reassumption include jurisdiction over child welfare services and investigative and preventive interventions in the homes of Indian children has also not been

adopted. The Act only authorizes reassumption over child custody proceedings. It is not the intent of the Act to exclude anyone from providing services to Indian families. It is only when such services may involve placing the child with someone other than his or her parents or Indian custodian that the Act becomes involved. Where jurisdiction is reassumed, social service agencies must comply with the requirements of a tribal court—not a state court—when placing a child.

(6) One commenter objected generally to the amount of information requested on the ground that it discriminates against tribes that have been subjected to state jurisdiction since those tribes already exercising jurisdiction are not required to provide similar information. Most of the information requirements have been retained because such "discrimination" is mandated by the statute. Under 25 U.S.C. 1918 those tribes that wish to reassume jurisdiction are required to submit a "suitable plan to exercise such jurisdiction" and the Secretary is to determine the "feasibility" of the plan. Congress has imposed no similar requirements on tribes already exercising Indian child custody jurisdiction.

(7) One commenter asked that the regulations be more specific as to which entity is the "governing body" of a tribe. The regulations cannot be more specific because the internal organization differs from tribe to tribe.

(8) One commenter objected to the requirement that the tribe establish a procedure for determining who is a member of a tribe on the grounds that it is the obligation of the parties and the court to make that determination. This recommendation has not been adopted. A method of determining membership was one of the items specifically listed in 25 U.S.C. 1918(b) as a factor the Secretary may consider in determining the feasibility of a plan. It is true that the legal burden for determining whether the Act applies to a particular child is on the parties and the court. This provision does not change that burden. It merely asks that the tribe have a procedure for cooperating with the court or the parties in meeting their burden. Since the tribe is in the best position to know who its own members are, it seems reasonable to ask it to cooperate in that respect. Because of the special needs of children, promptness and certainty are more important in child custody proceedings than they are in most other litigation. Tribal cooperation in this respect will help assure that its members receive the benefits of the Act and will impose only a minimal burden on the tribe.

(9) Some commenters recommended that the Bureau accept without question a tribal governing body's conclusion that the tribe has authorized it to exercise jurisdiction over Indian child custody matters. Under 25 U.S.C. 1918, the Secretary is to determine whether the exercise of jurisdiction is feasible. The exercise of such jurisdiction by an entity that has not been authorized by the tribe to exercise it is clearly not feasible. It has been a longstanding general principle on the part of the Department of the Interior that the Indian tribes are empowered to interpret their own governing documents. Consequently, when this Department is called upon to decide an issue that requires the interpretation of tribal governing documents, it will give great weight to any interpretation of those documents made by an appropriate tribal forum. However, the Department is not necessarily bound thereby. The Secretary cannot accept or acquiesce to a tribal interpretation which is so arbitrary or unreasonable that its application would constitute a violation of the right to due process. *See* Letter decision of Forrest J. Gerard, Assistant Secretary for Indian Affairs, dated August 28, 1978, 5 Indian Law Reporter H–17, 18 (1978). Exercise of jurisdiction by an entity not authorized to exercise it would constitute a violation of the right to due process. Accordingly, the requirement of a citation to the provision in the tribal constitution or other governing document, if any, that authorizes the governing body to exercise jurisdiction over Indian child custody matters has been retained so the Department will have the information it needs in order to make the determination of feasibility. The tribal governing body's conclusion on that point will be given great weight and will be upheld if its interpretation is not arbitrary or unreasonable. If the tribal electorate wishes its governing body to exercise such authority despite the Department's conclusion that its constitution or governing document does not authorize the governing body to do so, the constitution or governing document can be amended. Non-tribal courts are sometimes called upon to interpret tribal laws. *See e.g., Quechan Tribe of Indians* vs. *Rowe,* 531 F. 2d 408 (9th Cir. 1976); *Confederated Tribes of the Colville Indian Reservation* vs. *Washington,* 591 F. 2d 89 (9th Cir. 1979). Clarification of the governing body's authority prior to reassumption of jurisdiction will avoid delays later on when the custody of specific Indian children is being decided by the court.

(10) Some commenters also objected to requesting a copy of any tribal ordinances or court rules establishing procedures for exercising child custody jurisdiction. Exercise of jurisdiction by a tribe that has not thought through how it is going to handle the cases that come to it cannot be said to be feasible. The most basic element of due process is the existence of a procedure on which the parties to a dispute can rely as the basis for their rights. Accordingly this requirement has been retained.

(11) A number of commenters objected to the requirement that the tribal court that is established be capable of deciding child custody matters in a manner that meets the requirements of the Indian Civil Rights Act. One commenter argued that after the Supreme Court's decision in *Santa Clara Pueblo* vs. *Martinez,* 436 U.S. 49 (1978), the question of how the Indian Civil Rights Act applies to tribal government activities should be left exclusively to the tribe. In footnote 22 the Court in *Martinez* specifically noted that it may be appropriate to consider Indian Civil Rights Act issues when the Department exercises its approval authority. This Department will not exercise its approval power in a manner that authorizes violations of civil rights. A plan that does not provide for exercise of jurisdiction in a manner that protects rights guaranteed under the Indian Civil Rights Act is not a feasible plan as required by the Indian Child Welfare Act.

(12) One commenter recommended that a tribe only be required to show that it is able to establish the necessary support services. This recommendation has not been adopted. Services should be available at least by the time reassumption occurs. Such services need not be organized in the same fashion as services from traditional social services agencies. Such services need not be funded or controlled by the tribe. All that is necessary is that they be available.

(13) One commenter recommended that reassumption of jurisdiction not be approved unless the tribe could show that it is in "the best interests of children" that jurisdiction would be reassumed. Such a standard is not authorized by the Act. The Act only requires that tribal jurisdiction be "feasible"—not that it necessarily be shown to be better for the children than state jurisdiction. Although the findings in the Act indicate that Congress believes tribal jurisdiction will, in most cases, be better for Indian children, it

did not require that each tribe reassuming jurisdiction prove that point. States are not denied jurisdiction over child custody matters relating to their residents simply because a neighboring state could handle the cases better. Tribes should not be required to compete with neighboring jurisdictions any more than states are.

(14) A recommendation that paragraph (a)(4) be modified to define in precise terms what is meant by "the requirements of the Indian Civil Rights Act" has not been adopted because it would be virtually impossible to do so in sufficiently complete fashion. The most important requirement of that Act in this context is the due process provision, which requires that disputes be handled in a manner that is fair. An effort to define "fairness" in detail would tend to unnecessarily restrict tribal options. The Department will look for guidance on that issue to the existing body of caselaw defining what "due process" or "fairness" means in specific situations.

(15) One commenter objected to the requirement in § 13.14 for Federal Register publication of the fact that a petition has been received prior to taking action on the petition. The commenter argued that publication would place on tribes an undue burden of having to respond to adverse comments on their petitions. The purpose of publication is not to solicit comments but to give the public and affected officials and agencies some advance notice that a change in jurisdiction may be coming. Although comments will not be solicited, any that are volunteered will be considered and made available to the petitioning tribe or tribes. The primary author of this document is David Etheridge, Office of the Solicitor, Department of the Interior; (202) 343-6967.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Subchapter B, Chapter 1, of title 25 of the Code of Federal Regulations is amended by adding a new Part 13, reading as follows:

PART 13—TRIBAL REASSUMPTION OF JURISDICTION OVER CHILD CUSTODY PROCEEDINGS

Subpart A—Purpose

Sec.
13.1 Purpose.

Subpart B—Reassumption

13.11 Contents of reassumption petitions.
13.12 Criteria for approval of reassumption petitions.
13.13 Technical assistance prior to petitioning.
13.14 Secretarial review procedure.
13.15 Administrative appeals.
13.16 Technical assistance after disapproval.

Authority: 25 U.S.C. 1952.

Subpart A—Purpose

§ 13.1 Purpose.

(a) The regulations of this part establish the procedures by which an Indian tribe that occupies a reservation as defined in 25 U.S.C. § 1903(10) over which a state asserts any jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588) Pub. L. 83-280, or pursuant to any other federal law (including any special federal law applicable only to a tribe or tribes in Oklahoma), may reassume jurisdiction over Indian child custody proceedings as authorized by the Indian Child Welfare Act, Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C. § 1918.

(b) On some reservations there are disputes concerning whether certain federal statutes have subjected Indian child custody proceedings to state jurisdiction or whether any such jurisdiction conferred on a state is exclusive of tribal jurisdiction. Tribes located on those reservations may wish to exercise exclusive jurisdiction or other jurisdiction currently exercised by the state without the necessity of engaging in protracted litigation. The procedures in this part also permit such tribes to secure unquestioned exclusive, concurrent or partial jurisdiction over Indian child custody matters without relinquishing their claim that no federal statute had ever deprived them of that jurisdiction.

(c) Some tribes may wish to join together in a consortium to establish a single entity that will exercise jurisdiction over all their members located on the reservations of tribes participating in the consortium. These regulations also provide a procedure by which tribes may reassume jurisdiction through such a consortium.

(d) These regulations also provide for limited reassumptions including jurisdiction restricted to cases transferred from state courts under 25 U.S.C. § 1911(b) and jurisdiction over limited geographical areas.

(e) Unless the petition for reassumption specifically states otherwise, where a tribe reassumes jurisdiction over the reservation it occupies, any land or community occupied by that tribe which subsequently acquires the status of reservation as defined in 25 U.S.C. § 1903(10) also becomes subject to tribal jurisdiction over Indian child custody matters.

Subpart B—Reassumption

§ 13.11 Contents of reassumption petitions.

(a) Each petition to reassume jurisdiction over Indian child custody proceedings and the accompanying plan shall contain, where available, the following information in sufficient detail to permit the Secretary to determine whether reassumption is feasible:

(1) Full name, address and telephone number of the petitioning tribe or tribes.

(2) A resolution by the tribal governing body supporting the petition and plan. If the territory involved is occupied by more than one tribe and jurisdiction is to be reassumed over all Indians residing in the territory, the governing body of each tribe involved must adopt such a resolution. A tribe that shares territory with another tribe or tribes may reassume jurisdiction only over its own members without obtaining the consent of the other tribe or tribes. Where a group of tribes form a consortium to reassume jurisdiction, the governing body of each participating tribe must submit a resolution.

(3) The proposed date on which jurisdiction would be reassumed.

(4) Estimated total number of members in the petitioning tribe or tribes, together with an explanation of how the number was estimated.

(5) Current criteria for membership in the tribe or tribes.

(6) Explanation of procedure by which a participant in an Indian child custody proceeding may determine whether a particular individual is a member of a petitioning tribe.

(7) Citation to provision in tribal constitution or similar governing document, if any, that authorizes the tribal governing body to exercise jurisdiction over Indian child custody matters.

(8) Description of the tribal court as defined in 25 U.S.C. § 1903(12) that has been or will be established to exercise jurisdiction over Indian child custody matters. The description shall include an organization chart and budget for the court. The source and amount of non-tribal funds that will be used to fund the court shall be identified. Funds that will become available only when the tribe reassumes jurisdiction may be included.

(9) Copy of any tribal ordinances or tribal court rules establishing procedures or rules for the exercise of jurisdiction over child custody matters.

(10) Description of child and family support services that will be available to the tribe or tribes when jurisdiction reassumed. Such services include any resource to maintain family stability or provide support for an Indian child in the absence of a family—regardless of whether or not they are the type of services traditionally employed by social services agencies. The description shall include not only those resources of the tribe itself, but also any state or federal resources that will continue to be available after reassumption of jurisdiction.

(11) Estimate of the number of child custody cases expected during a year together with an explanation of how the number was estimated.

(12) Copy of any tribal agreements with states, other tribes or non-Indian local governments relating to child custody matters.

(b) If the petition is for jurisdiction other than transferral jurisdiction under 25 U.S.C. 1911(b), the following information shall also be included in the petition and plan:

(1) Citation of the statute or statutes upon which the state has based its assertion of jurisdiction over Indian child custody matters.

(2) Clear and definite description of the territory over which jurisdiction will be reassumed together with a statement of the size of the territory in square miles.

(3) If a statute upon which the state bases its assertion of jurisdiction is a surplus land statute, a clear and definite description of the reservation boundaries that will be reestablished for purposes of the Indian Child Welfare Act.

(4) Estimated total number of Indian children residing in the affected territory together with an explanation of how the number was estimated.

§ 13.12 Criteria for approval of reassumption petitions.

(a) The Assistant Secretary—Indian Affairs shall approve a tribal petition to reassume jurisdiction over Indian child custody matters if:

(1) Any reservation, as defined in 25 U.S.C. 1903(10), presently affected by the petition is presently occupied by the petitioning tribe or tribes;

(2) The constitution or other governing document, if any, of the petitioning tribe or tribes authorizes the tribal governing body or bodies to exercise jurisdiction over Indian child custody matters;

(3) The information and documents required by § 13.11 of this part have been provided;

(4) A tribal court, as defined in 25 U.S.C. 1903(12), has been established or will be established before reassumption and that tribal court will be able to exercise jurisdiction over Indian child custody matters in a manner that meets the requirements of the Indian Civil Rights Act, 25 U.S.C. 1302;

(5) Child care services sufficient to meet the needs of most children the tribal court finds must be removed from parental custody are available or will be available at the time of reassumption of jurisdiction; and

(6) The tribe or tribes have established a procedure for clearly identifying persons who will be subject to the jurisdiction of the tribe or tribes upon reassumption of jurisdiction.

(b) If the technical assistance provided by the Bureau to the tribe to correct any deficiency which the Assistant Secretary—Indian Affairs has identified as a basis for disapproving a petition for reassumption of exclusive jurisdiction has proved unsuccessful in eliminating entirely such problem, the Bureau, at the request of the tribe, shall assist the tribe to assert whatever partial jurisdiction as provided in 25 U.S.C. 1918(b) that is feasible and desired by the tribe. In the alternative, the Bureau, if requested by the concerned tribe, shall assist the tribe to enter into agreements with a state or states regarding the care and custody of Indian children and jurisdiction over Indian child custody proceedings, including agreements which may provide for the orderly transfer of jurisdiction to the tribe on a case-by-case basis or agreements which provide for concurrent jurisdiction between the state and the Indian tribe.

§ 13.13 Technical assistance prior to petitioning.

(a) Upon the request of a tribe desiring to reassume jurisdiction over Indian child custody matters, Bureau agency and Area Offices shall provide technical assistance and make available any pertinent documents, records, maps or reports in the Bureau's possession to enable the tribe to meet the requirements for Secretarial approval of the petition.

(b) Upon the request of such a tribe, to the extent funds are available, the Bureau may provide funding under the procedures established under 25 CFR 23.22 to assist the tribe in developing the tribal court and child care services that will be needed when jurisdiction is reassumed.

§ 13.14 Secretarial review procedure.

(a) Upon receipt of the petition, the Assistant Secretary—Indian Affairs shall cause to be published in the Federal Register a notice stating that the petition has been received and is under review and that it may be inspected and copied at the Bureau agency office that serves the petitioning tribe or tribes.

(1) No final action shall be taken until 45 days after the petition has been received.

(2) Notice that a petition has been disapproved shall be published in the Federal Register no later than 75 days after the petition has been received.

(3) Notice that a petition has been approved shall be published on a date requested by the petitioning tribe or within 75 days after the petition has been received—whichever is later.

(b) Notice of approval shall include a clear and definite description of the territory presently subject to the reassumption of jurisdiction and shall state the date on which the reassumption becomes effective. A copy of the notice shall immediately be sent to the petitioning tribe and to the attorney general, governor and highest court of the affected state or states.

(c) Reasons for disapproval of a petition shall be sent immediately to the petitioning tribe or tribes.

(d) When a petition has been disapproved a tribe or tribes may repetition after taking action to overcome the deficiencies of the first petition.

§ 13.15 Administrative appeals.

The decision of the Assistant Secretary—Indian Affairs may be appealed under procedures established in 43 CFR 4.350–4.369.

§ 13.16 Technical assistance after disapproval.

If a petition is disapproved, the Bureau shall immediately offer technical assistance to the tribal governing body for the purpose of overcoming the defect in the petition or plan that resulted in the disapproval.

Forrest J. Gerard,

Assistant Secretary—Indian Affairs.

[FR Doc. 79-23480 Filed 7-30-79; 8:45 am]

BILLING CODE 4310-02-M

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25 CFR Part 23

Indian Child Welfare Act; Implementation

July 24, 1979.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs hereby adds a new part to its regulations to implement the provisions of the Indian Child Welfare Act of 1978 (Pub. L. 95-608). The Indian Child Welfare Act seeks to protect the best interest of Indian children by promoting the stability and security of Indian families and tribes by preventing the unwarranted and arbitrary removal of Indian children from their Indian homes; establishing procedures for transferring Indian child custody proceedings from state courts to the appropriate tribal courts; setting forth criteria for placement of children voluntarily or involuntarily removed from their parents, guardians, or custodians; providing a system of intervention in state court proceedings by the child's parents, relatives or the child's tribe in involuntary removal and adoption matters of Indian children, and providing grants to Indian tribes and organizations on or "near" reservations or off-reservations to plan, establish, operate and manage child placement and family service programs to carry out the intent of the Act. It is intended that these regulations will complement those related procedures published in 25 CFR 13, "Tribal Reassumption of Jurisdiction Over Child Custody Proceedings," and will also complement "Guidelines for State Courts" relative to Indian child custody proceedings to be published as a Federal Register Notice.

EFFECTIVE DATE: These new regulations will become effective August 30, 1979.

FOR FURTHER INFORMATION CONTACT: Raymond V. Butler, Chief, Division of Social Services, Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20245 (703-235-2756).

SUPPLEMENTARY INFORMATION: On April 23, 1979 there were published in the Federal Register (44 FR 23993) proposed regulations for the Indian Child Welfare Act. Interested persons were given 30 days in which to submit written comments regarding the proposed regulations. Thorough and careful consideration was given to all comments received during this period. Many comments were subsequently adopted but certain others were not.

The function of regulations is to provide rules that the issuing agency will follow in carrying out the responsibilities assigned to it by an Act of Congress. Under the Indian Child Welfare Act, responsibility for the conduct of most aspects of Indian child custody proceedings remains with state and tribal courts. Where the responsibility lies with the state or the tribe, it is the state or tribe that has both the authority and the responsibility to establish rules or procedures to carry out those responsibilities.

The simple fact that a statute deals with Indians does not authorize this Department to promulgate rules governing all aspects of its implementation. For example, 25 U.S.C. 194 governs the burden of proof in certain cases involving Indians, but does not authorize the Department to regulate the courts in such cases. An agency may not promulgate binding rules if the ultimate power to determine the content of the law covered by the rules is in the courts. *See generally,* Davis, *Administrative Law Treatise* § 5.03 (1958). By leaving with courts the jurisdiction to decide Indian child custody matters, Congress left to those courts the responsibility of determining how the Act applies to the cases before them.

Some portions of the Act do assign the Interior Department certain responsibilities related to child custody proceedings. For example, the Department is to pay for appointed counsel in some cases, and is to be notified of child custody proceedings in certain instances. Regulations implementing those Departmental responsibilities can and do have some impact on court procedures.

Some commenters objected to publication of the guidelines for state courts as a notice rather than as a proposed rule. They fear that the guidelines will be invalidated by a court for failure to follow the rule-making procedures of the Administrative Procedures Act. The guidelines by themselves are not intended to have the force of law; consequently, no court should have occasion to rule on their validity. The guidelines will have the force of law only as they are adopted by individual states as legislation, regulations, or court rules. So long as proper state procedures are followed in adopting them, they will not be subject to challenge on procedural grounds.

A number of commenters apparently assume that all language in the statute must be repeated in the regulations if it is to have the force of law. The statute is fully effective without reference to the regulations. The purpose of the regulations is merely to provide rules for the Department to follow in carrying out its responsibilities under the Act. Statutory language is included at some points in the regulations to explain the context of the rules and to reduce the need to refer to the statute in order to understand the regulations. Repeating or omitting statutory language in the regulations has no effect on the validity of that statutory language.

A number of commenters also recommended that the regulations "correct" what they regarded as loopholes, mistakes, or bad policy contained in the statute. This Department does not have the authority to "correct" alleged mistakes of Congress through regulations. Where statutory language is either vague or ambiguous and an interpretation of that language is necessary for this Department to carry out its responsibilities, regulations may properly provide such an interpretation. Such interpretations, however, cannot be contrary to the plain meaning of the Act itself.

A. Changes Made Due to Comments Received

(1) Section 23.2(b)(5) is revised to read "a crime in the jurisdiction where the act occurred."

This additional language has been added to clarify that an offense allegedly committed by a child must be a crime if committed by an adult at the same place in order to exempt a child custody proceeding from the provisions of the Act. A new sentence has also been added stating that "status offenses" such as truancy and incorrigibility (which are not crimes adults can commit) are covered by the Act. This sentence simply states in positive terms the legal effect of the Act in excluding from coverage under the Act only those offenses which an adult can commit.

(2) Section 23.2(d) is revised to include subtitles after each subsection in order to highlight the variances in definitions. These subtitles are: (1) Jurisdictional Purposes; (2) Service Eligibility for Children and Family Service Programs On or Near Reservations; and (3) Service Eligibility for Off Reservation Children and Family Service Programs. In part (2) the Secretary of Health, Education, and Welfare is delineated for further clarification. An additional sentence is included to explain that tribal membership is based on tribal law, ordinance, or custom.

(3) Section 23.2(f), a cross reference to the "guidelines for State Courts" is made for further clarification.

(4) Section 23.2(g), an (s) is added to person to refer to the situation where more than one person is the custodian.

(5) Section 23.2(k), the definition of reservation is added as written in the Act for the purpose of clarification. Reference is frequently made to "the reservation," therefore the inclusion of

this definition in the regulations is necessary.

(6) Section 23.2(l), a definition of "state court" is added for clarification because of the frequent reference to this term.

The definition includes the District of Columbia and any territory or possession of the United States because this Department believes that definition to be consistent with the intent of Congress. Whether the term "state" includes the District of Columbia, territories and possessions depends on the purposes of Congress in enacting the specific legislation and the circumstances under which the words were employed. See e.g., *Examining Board* vs. *Flores de Otero,* 426, U.S. 572 (1976). In 25 U.S.C. 1902 Congress stated that its intent in passing the Indian Child Welfare Act was to establish minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes. In 25 U.S.C. 1901(4) Congress expressed its concern over the alarmingly high percentage of Indian families broken up by the removal of their children by non-tribal public and private agencies. The District of Columbia, U.S. possessions and territories also have non-tribal public agencies that place children within their jurisdiction. It seems unlikely that Congress intended to exclude any non-tribal government from the minimum federal standards.

The definition also includes government agencies authorized by law to make any placements covered by the Act regardless of whether they are called courts. This definition parallels the statutory definition of tribal court. 25 U.S.C. 1903(12).

(7) Section 23.2 (m) and (n) are renumbered due to the addition of the two previous definitions.

(8) Section 23.3 Policy, "preventative measures" is changed to "measures to prevent the breakup of Indian families" for the purposes of clarification.

(9) The addresses for sending notice to the Secretary are listed in § 23.11(b). The contents of the notice to the Secretary are set out in § 23.11(c). Additional information concerning rights under the Act that the Bureau will include in its notice to the tribes, parents and Indian custodians is listed in § 23.11(d). In response to a comment, this subsection also provides for asking tribal officials to handle in a confidential manner the information they receive concerning individual cases.

(10) Section 23.11(d). Notice may also be given by "personal service." This type of service is included to give an alternative form of service or "higher standard of protection to the rights of the parent," custodian or tribe as authorized in Section 111 of the Act.

(11) Several commenters expressed concern that the proposed rules in Section 23.11 could be construed as authorizing BIA officials to halt their efforts to identify a child's tribe or to locate the child's parents or Indian custodians after only 15 days of effort. The deadline was included in the proposed regulations to assure prompt action by Bureau officials. Prompt action is needed since the court is free to begin its proceedings only 10 days after notice to the Secretary. Even if the court is willing to continue the case pending Bureau action, a long delay could be prejudicial to the child and other parties to the proceedings. There may be many instances, however, in which 15 days is simply not enough time to complete the search.

Two changes have been made in the regulations to resolve this problem. First, the Bureau is to attempt to complete the search and give notice within 10 days in order to conform with Section 102 of the Act, and so that those who are notified will be able to participate in a timely manner in the proceedings. Second, if the Bureau has not been able to complete its efforts in that time, it is to inform the court of that fact and let the court know how much more time will be needed. The court can then use that information to decide whether the proceedings should be further delayed. Regardless of what action the court takes, the BIA will complete its search efforts.

(12) One commenter suggested that the time problem could be alleviated to some extent if the BIA would be willing to undertake searches before a case is actually filed when asked to do so by someone who is contemplating filing such an action. This suggestion has been adopted in § 23.11(f).

(13) In Section 23.11(e) the terminology "has a relationship with an Indian tribe" is changed to "meets the criteria of an Indian child as defined in section (4) of the Act" for further clarification and to relate back to the legislative language.

(14) Section 23.12 is changed to enable any tribe to designate by resolution "or by such form as the tribal constitution or current practice requires" an agent for service of notice.

This change expands the methods by which an agent for notice may be designated. Some tribes do not issue resolutions, but grant authority for action by other methods.

(15) In Section 23.12 the sentence, "The Secretary shall publish the name and address of the designated agent for service of notice in the Federal Register," is changed by adding the following, "on an annual basis." A current listing of such agents will be maintained by the Secretary, and will be available through the Area Offices. These changes are made to more adequately handle the requests for information regarding agents for service, many of whom could change on a frequent basis.

(16) Section 23.21 is changed to delete the word "non-profit" from grant eligibility criteria. Profit-making Indian organizations otherwise eligible for grants under this part may apply for said grants for non-profit-making programs. Comments suggested that there are several Indian organizations which have both profit and non-profit component programs. Section 23.21 is also changed to make clear that applicants may apply for a grant individually or as a consortium.

(17) Section 23.22 is changed to make clear that the examples of Indian child and family service programs provided therein are, in fact, just examples and do not limit or restrict the kinds of child and family service programs for which grants may be provided. Some renumbering of subsections is also done to make the overall section more readable.

(18) Section 23.25(a) is changed to recognize that statistical and other precise quantitative data are not always available to evaluate the need for Indian child and family service programs. Such data may henceforth be considered only insofar as practicable and may include estimated data as well as actual data. Section 23.25(a) is also changed to ensure that quality and relevance of service to Indian clientele be considered when determining Indian accessibility to existing child and family service programs.

(19) Section 23.25(b) is changed to emphasize that the governing body of a tribe may subgrant or subcontract its grant to an Indian organization if it desires to do so.

(20) Section 23.25(c) is changed to give preference for selection for off-reservation grants to off-reservation Indian organizations showing substantial rather than majority support from the community to be served. Section 23.25(c) is also changed to waive the substantial community support requirement for certain existing Indian organizations.

(21) Section 23.27(c)(1) is changed to delete reference to distribution of grant

funds based upon ratio of number of Indian children under age 18 to be served under a proposal to number of Indian children under 18 nationally.

(22) Section 23.35(a). To facilitate administration of grants pursuant to 23.27(a), a change was made transferring the administration of grants from the Central Office to the Area Office level.

(23) Section 23.43(a) is changed to specifically reference funds under Titles IVB and XX of the Social Security Act as appropriate matching shares for grant funds provided under this part, because they were specifically referenced in the Act.

(24) Section 23.43(b) is changed to (c), and a new (b) is added to reference agreements between the Department of the Interior and the Department of Health, Education, and Welfare for use of funds under this part.

(25) Section 23.43(b) was added to emphasize section 203(a) of the Act. That section was not addressed in the proposed regulations.

(26) Many recommendations were received concerning design of a funding formula to ensure that all approved grant applicants receive a proportionately equitable share of funds and that small tribes and Indian organizations do not lose out to large tribes and Indian organizations when funds are distributed. These recommendations will be utilized insofar as possible in the formula design. The formula itself will be published at a later date as a Federal Register Notice.

(27) In Section 23.81(a), the address for transmittal of information to the Secretary shall be sent to the Chief Justice of the highest court of Appeal, "the Attorney General, and Governor" of each state. The Governor was added to insure wider distribution of this material among state agencies.

(28) Section 23.81(a)(1) is changed to "Name of the child, the tribal affiliation, and the quantum of Indian blood," to secure more information for the adult Indian individual who is adopted.

(29) Section 23.81(b), or, is inserted between "adoptive or foster parents" who may request information for an adopted Indian individual to correct an error, and comply with the language of the Act.

(30) Section 23.81(b), additional wording has been added to clarify what information will be disclosed for enrollment purposes, for determining rights or benefits and to whom it may be released. These limitations were added to stress not only the confidential nature of this information, but also the importance of enrollment.

(31) Sections 23.91, 23.92, and 23.93 were added to assist the tribes and courts in carrying out the purposes of the Act.

B. Changes Not Adopted

Certain other comments were received and duly considered, but have not been incorporated into the regulations. The following suggested changes were not adopted for the reasons given:

(1) A number of very forceful comments were received to the effect that the Bureau of Indian Affairs had disclaimed its responsibility insofar as would apply to proceedings in the state courts by publishing proposed "Guidelines for State Courts" rather than proposed regulations in Part 23. As many comments indicated, it was initially administratively planned to write the guidelines as regulations. Also, as a result of the public hearings, the National Congress of American Indians and the National Indian Court Judges Association proposed these guidelines as regulations. It is not administrative policy, but rather the strong legal position of the Office of the Solicitor, Department of the Interior, that the material be published as "Guidelines for State Courts." The Office of the Solicitor's legal position is set out at the beginning of this "Supplementary Information" section. Therefore, the "Guidelines for State Courts" are not included as regulations in Part 23 but will be published as a Federal Register Notice.

(2) Section 23.2. Comments were received in each of the following instances regarding the language employed in certain of the definitions of this section:

a (b) The phrase "child custody proceeding" was objected to as being too restrictive and as not encompassing juvenile delinquency proceedings:

b (b)(1) "Foster care placement" as defined was viewed as being too narrow in scope, and as not relating to institutional placements, voluntary placements, and to special circumstances which might be imposed as a result of divorce proceedings.

One commenter recommended that Section 23.2(b)(5) be changed to reflect the statement in the Senate Report on the Act at Page 16 that the definition of child placement includes "juveniles charged with minor misdemeanant behavior who would be covered by prohibitions against incarceration in secure facilities by the Juvenile Justice and Delinquency Prevention Act of 1974." The General Counsel's Office of the Law Enforcement Assistance Administration, however, has informed this Department that incarceration of juveniles charged with minor misdemeanors is permitted under that Act. For that reason, the definition has not been modified to include placements based on such offenses.

c (d) A respondent requested revision in this subsection to expand the definition of "Indian" to include non-Indian children of Indian parents;

d (d & e) Comment called for a more clearly-drawn division between the definitions of "Indian" and "Indian child." (A numbering and a title change were made, with no change being made in content;)

e (f) It was suggested that the proposed definition of "Indian child's tribe" should be reworded so as to deal more explicitly with those cases in which an Indian child is eligible for membership in more than one tribe. Further comment asked that this definition be expanded to make direct reference to Alaska Natives.

f (g) It was suggested that the definition of the term "Indian custodian" be expanded to include Indian social services agencies;

g (g) Usage of the term "transferred" was objected to;

h (i) Request was made that an expansion of the definition of "Indian tribe" be made to include Canadian tribes;

The language was not changed in any of the foregoing definitions because each of the definitions was taken directly from the Act. It cannot be the function of regulations to expand upon or to subtract from legislation as enacted by the Congress.

i (j) One commenter expressed doubt concerning the constitutionality of the definition of "parent" in both the regulations and the statute based on the recent Supreme Court decision in *Caban* vs. *Mohammed*, 47 U.S.L.W. 4462 (April 24, 1979). The court in that case held unconstitutional a statute permitting an unwed mother, but not an unwed father, to block an adoption by denying consent. Unlike the statute involved in that case, however, the Indian Child Welfare Act does not require a father to be married to have all the rights of a parent. The father need merely acknowledge paternity. This requirement imposes even less of a burden on the father than the "legitimation" requirement imposed by another statute that was upheld by the Supreme Court the same day it decided *Caban; Parham* vs. *Hughes*, 47 U.S.L.W. 4457 (April 24, 1979). Unlike marriage, neither legitimation nor acknowledgement requires the consent

of the mother. The reason such a requirement is permissible is well expressed in Justice Powell's concurring opinion in *Parham:* "The marginally greater burden placed upon fathers is no more severe than is required by the marked difference between proving paternity and proving maternity." *Id.* at 4460.

(3) Two comments were received which requested that a definition for "tribal law or custom" be included in the regulations. Such a definition was written into the proposed guidelines, and it was deemed more appropriate for it to remain therein.

(4) Comments were received asking for definitions of "domicile" and "residence." Ultimate definition of the terminology in question must be in accordance with case law.

(5) Comment was received regarding the proposed definition of the term "parent" relative to its application to the unwed father and the minor unwed parent. No changes were made because (a) the existing definition is not in conflict with the Supreme Court decision rendered in the *Stanley* vs. *Illinois,* 405 U.S. 645 (1972) decision, and (b) the minority of an individual does not affect her or his relationship as a parent.

(6) One comment asserted that there was a need to define the standards of evidence addressed in Section 102 (e and f) of the Act. As these standards have been developed through case law, it was considered impractical to attempt to formulate definitions in connection with this particular Act.

(7) Another group of public comments requested that the designations "extended family" and "member of a tribe" be defined. Both of these terms are defined either by tribal law or by tribal custom. Consequently, no definitions are offered in the regulations.

(8) Section 23.11(5). One comment sought the inclusion of terminology relating to termination proceedings resulting from juvenile delinquency court actions. No additional wording was added to this section because under 25 U.S.C. 1903(1) only placements—not terminations—based on acts of delinquency are excluded from coverage of the Act.

(9) Section 23.11. A comment was received which asked that notice be made to the tribe in all voluntary proceedings. This suggested change was not adopted because the legislation does not, in regard to voluntary proceedings, authorize notice to the tribe; therefore, inclusion of such a regulation would be beyond the scope of the Act.

(10) Section 23.11. An additional comment contended that state courts should be required to give notice "with due diligence." A regulation was not developed for this purpose due to the fact that the Secretary of the Department of the Interior does not have the authority to promulgate regulations governing the conduct of state courts.

(11) Section 23.11. Two comments posed questions relating to the protection of the civil rights of Indian children, and identified a felt need for the imposition of a specified time limitation restricting the required notice procedure. Approval of changes regarding these issues was not warranted because (a) the Indian Civil Rights Act provides the necessary protections, and (b) due to exigencies of individual cases, a rigid and restrictive time limitation would be impossible to structure.

(12) Section 23.11. One comment called for the insertion in the notice provision of the phrase "reasonable cause to believe that the child was an Indian child." Such an addition is not acceptable because it is not within the scope of the Act as written in the legislation.

(13) Section 23.12. One comment proposed that the regulations be modified to allow tribal organizations to act as designated agents, or as coordinators of the duties and services associated with designated agents, for the serving of notice. No regulatory change was made in this instance, as doing so would expand the substance of this section beyond the scope of the Act.

(14) Section 23.12. A single comment was received requesting that membership criteria be published for each of the various tribes. This request will not be complied with because the details of membership requirements are readily available through tribal headquarters offices and Bureau Area Offices. Secondarily, the body of information requested is so extensive as to make its publication within the regulations unfeasible.

(15) A large number of comments received suggested a variety of changes to be made in § 23.12. These suggestions and the reasons they were not adopted are summarized as follows:

A number of comments were received urging that the Department pay any voucher certified to it by a state court without examining it to determine whether the court was correct in concluding that the Bureau should pay. Except with respect to the determination of indigency, this recommendation has not been adopted. Congress has directed that these payments be made from funds managed by the Interior Department. As manager of these funds, this Department is charged by Congress with the responsibility of assuring they are spent only for a Congressionally-authorized purpose. Since this Department is held accountable for the use of these funds, it must retain ultimate authority to refuse payment requests if it believes payment is not authorized by the statute.

Under 25 U.S.C. 1912(b), however, Congress has authorized payment when "the court determines indigency." Since the Congress has left this determination to the courts, this Department will not make its own determination of that issue. Consequently, the provision authorizing the Area Director to refuse payment if the court has abused its discretion in determining indigency has been deleted.

One commenter objected to the use of state standards and procedures for payment of counsel in juvenile delinquency proceedings as the criteria for reasonable fees to be paid counsel under the Indian Child Welfare Act. The Department did consider having vouchers submitted directly to the Department by the attorneys without requiring prior approval by the state court. If that approach had been adopted, the Department would have developed procedures and criteria based on those employed by states where appointed counsel is paid in non-juvenile delinquency child custody cases. Since state courts already have substantial experience in paying appointed counsel in juvenile proceedings (because appointed counsel is clearly required by the U.S. Constitution), the Department concluded the courts were better prepared to make the initial determination as to the reasonableness of the fees requested by appointed attorneys. For that reason, the regulations provide for vouchers to be approved first by the state court. Under the regulations the Department will pay the amount approved by the court unless the Department is prepared to say that the court abused its discretion.

The regulations could have asked the state courts to apply procedures and criteria relating specifically to dependency proceedings. Those procedures and criteria, of course, would have been new to the states involved since the Department is not authorized by Congress to make payments in states where state law authorizes payment in dependency proceedings. The Department concluded administration of the program would be more orderly if states could use the procedures and criteria they are already using in other cases rather than having to apply new rules. There are, of course, differences between juvenile

delinquency proceedings and dependency proceedings. But since delinquency proceedings more closely resemble the type of proceedings covered by the Act than do the proceedings for any other cases where all states pay appointed counsel, they were regarded as the best model.

Some commenters recommended that the deadline for the Area Director to act on the notice be reduced from 15 days to five days. The deadline has been reduced to ten days. This decision was based on a balancing of the need of attorneys to know promptly whether they are eligible to be paid and the Department's need for time to conduct a review to determine eligibility.

Some commenters recommended that income from Indian claims, trust funds and certain other sources not be considered in determining indigency. Since this determination is the responsibility of the state court rather than the Department, that recommendation has not been adopted. For the same reason, the requirements in the proposed rules that indigency be determined on the same basis as is used in juvenile delinquency proceedings has been deleted. These issues may be dealt with in the guidelines, however.

Some commenters recommended that the regulations provide for tribal involvement in the appointment of counsel. This recommendation has not been adopted because under 25 U.S.C. 1912(b) it is the responsibility of the court to appoint counsel. This responsibility has not been assigned to either the Department or to tribes. The courts may, however, wish to seek the assistance of either the Department or the tribe in identifying attorneys with suitable expertise to take these cases. This matter may also be included in the guidelines.

In response to comments, the Bureau Area Office to which notices of appointments are sent has been changed from the office serving the Indian child's tribe to the office designated in § 23.11 for receipt of other notices. A particular Area Office is designated for each state (exceptions noted below). This approach will mean that, in most instances, a state court can send all materials to the same Bureau address. (Arizona, New Mexico, Oklahoma and Utah are exceptions noted in the regulations.)

One comment made the request that a provision be written into the regulations obligating the Bureau to pay an attorney who is found to be ineligible if the Bureau should fail to disapprove payment before the deadline. This comment has not been adopted. Congress has authorized payments only in certain types of cases for certain types of representation. The Bureau is not authorized to pay money merely as compensation for its slowness. A new subsection (g) has been added stating that a person aggrieved by the failure of the Area Director to act promptly may treat that failure as a denial for purposes of administrative appeal.

Another comment was that the Bureau pay for work done by an attorney on a case he or she, in good faith, believed was an eligible Indian child welfare case up to the time that the attorney is notified that he or she is not eligible for Bureau payments. This comment was also rejected because the Act does not authorize payments based on the good faith of the attorney. If the case is not one covered by the Act, the Bureau is not authorized to pay the attorney regardless of that attorney's good faith beliefs.

(16) Section 23.81. Two additional comments maintained that state courts should be mandated to share with tribal courts all information on final adoptive orders for Indian children. This suggestion could not be incorporated into the regulations because, again, it calls for expansion of the content of the legislation beyond its intended scope.

(17) A comment was made that a central register be established under § 23.81(a) for the purpose of immediate collection and disclosure of information on adoptions. This suggestion extends beyond the scope of the intent of the Act.

(18) A comment was made calling for the identification of the tribal court involved with the child under section 23.81(a). This additional information appeared unnecessary considering the information already provided by the state court to the Secretary.

(19) One comment was made that the Bureau insure the provision of the remedial or rehabilitative services required under section 102(d) of the Act. For families located off-reservation, this can be interpreted as being beyond the authority of the Bureau in its provision of services to off-reservation Indians and is unrealistic due to staff and financial limitations.

(20) One comment was made that the Secretary conduct outreach activity to locate and identify prospective foster and adoptive homes in order to assist states in their efforts to comply with section 105(a) and (b) of the Act. This proposed change was not incorporated into the regulations, as doing so would constitute a duplication of services in that a number of special projects are already engaged in the active recruitment of Indian foster and adoptive families. Moreover, it should be noted that this issue is a responsibility of the states and must be met to fulfill the requirements of the Act.

(21) One comment was made that the Bureau publish in the Federal Register the various tribal placement preferences (refer to section 105(c) of the Act). This recommendation was not accepted because the Federal Register is not readily available to the population at large, and it is important that the tribes be contacted directly on these matters.

(22) Comments were received containing specific objections to Bureau of Indian Affairs involvement in regulating grants to be provided under Title II of Pub. L. 95-608. The responsibility for regulating these grants was given by the Act to the Secretary of the Interior who in turn has lawfully delegated that responsibility to the Assistant Secretary—Indian Affairs.

(23) A number of comments questioned use of the basic Pub. L. 93-638 Indian Self-Determination grant regulation format in relation to these Indian Child Welfare Act grant regulations. Related comments also questioned the various grant application review levels and time frames for Bureau action which generally conform to the Pub. L. 93-638 format. No changes were made in this regard since the Pub. L. 93-638 format, and its application review levels and time frames for Bureau an applicant actions, has proven administratively feasible for both Bureau and grant applicants.

(24) Some comments received from Tribal governing bodies recommended that tribes be routinely given a proportionately higher ratio of available grant funds than that given Indian organizations. This recommendation was not adopted as the Act does not provide for such an advantage to tribes.

(25) Some comments objected to § 23.22, Purpose of grants, in its entirety. The rationale presented was that a sovereign tribal entity should not be restricted in any way in its decision as to how Federal grant funds will be utilized. The recommendation that §23.22 be entirely deleted was not adopted. The Act is specific in its direction that grants will be made for the establishment and operation of Indian Child and family service programs with the objective being the prevention of the breakup of Indian families. Section 23.22 attempts to make that basic point and provides examples of such programs without restricting applicants to those examples.

(26) A few comments pertained to the application selection criteria in § 23.25 and recommended that Indian

organizations which are not tribal governing bodies be able to apply for grants for on or "near" reservation programs. This change was not adopted as this Bureau is committed to working in a government-to-government relationship directly with and through tribal government relative to Bureau-funded programs on or "near" reservations. It is also noted that a tribal governing body may subgrant or subcontract its grant under this part to any Indian organization it wishes.

(27) A few comments pertained to funding available for grants under this part. One comment pointed out that subsidy programs for adopted children should take into account that adoptions are for life and that the grant regulations § 23.22(a)(5)) should provide for subsidies until the adopted child reaches majority. Another comment recommended that § 23.27(c) should delete reference to grant approvals being subject to availability of funds. No changes were made in this overall regard since the Bureau's appropriations are received from the Congress on an annual basis and the Bureau subsequently may only fund programs on a year-to-year basis dependent entirely upon funds appropriated by the Congress.

(28) One comment recommended that adoption subsidy grant programs, § 23.22(a)(5), be extended to legal guardians as well as to adoptive parents. This recommendation was not adopted as legal guardians can receive payments for foster care from established resources.

(29) One commenter suggested that § 23.81(b) be further clarified and expanded regarding the release of information and method of enrollment for eligible Indian adopted children. It was decided that the Chief Tribal Enrollment Officer only will certify to the tribe information necessary for enrollment where the parent has filed an affidavit of confidentiality. The reason for this change is to limit the number of people who might have access to this information, and to protect its confidential nature, as the Secretary is mandated to do under section 301 of this Act.

(30) Some comments recommended that grants for off reservation programs be provided only to governing bodies of Federally-recognized tribes. This recommendation was not adopted since it would unduly limit the specific role of off-reservation Indian organizations relative to implementation of the Act which specifically authorizes grants for these Indian Organizations.

(31) A comment was made pursuant to section 103(c) of the Act that the Bureau give notice to a parent that any adoption of a child for which the parent had voluntarily terminated parental rights can be invalidated within two years after the adoption if the parent can prove fraud or duress. This recommendation was not adopted because it was felt that this practice, on a general basis, would not be in the best interest of the children involved. If cases arise that warrant this type of assistance, such assistance may be provided on a case-by-case basis.

(32) A comment was made that under Section 105(e) of the Act, requirements should be established regarding the content of Indian child placement records maintained by the states. This recommended change was not adopted because the regulation of state social service agencies does not fall within the authority granted to the Secretary of the Interior.

The authority for issuing these regulations is contained in 5 U.S.C. 301 and sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 209 DM 8. The primary authors of this document are Raymond V. Butler, Chief, Division of Social Services, Bureau of Indian Affairs, and David Etheridge, Office of the Solicitor, Department of the Interior.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Subchapter D, Chapter I, Title 25 of the Code of Federal Regulations is amended by adding a new Part 23, reading as follows:

PART 23—INDIAN CHILD WELFARE ACT

Subpart A—Purpose, Definitions and Policy

Subpart B—Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel

Subpart C—Grants to Indian Tribes and Indian Organizations for Indian Child and Family Programs

Subpart D—General Grant Requirements

Subpart E—Grant Revision, Cancellation or Assumption

Subpart F—Hearings and Appeals

Subpart G—Administrative Requirements

Subpart H—Administrative Provisions

Subpart I—Assistance to State Courts

Authority: 5 U.S.C. 301; secs. 463 and 465 of the revised statutes (25 U.S.C. 2 and 9).

Subpart A—Purpose, Definitions, and Policy

§ 23.1 Purpose.

The purpose of the regulations in this Part is to govern the provision of administration and funding of the Indian Child Welfare Act of 1978 (Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C. 1901-1952).

§ 23.2 Definitions.

(a) "Act" means the Indian Child Welfare Act, Pub. L. 95-608 (92 Stat. 3073), 25 U.S.C. 1901 *et seq.*

(b) "Child custody proceeding," which shall mean and include:

(1) "Foster care placement"—any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(2) "Termination of parental rights"—an action resulting in the termination of the parent-child relationship;

(3) "Preadoptive placement"—the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(4) "Adoptive placement"—the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(5) Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime in the jurisdiction where the act occurred or upon an award, in a divorce proceeding, of custody to one of the parents. It does include status offenses, such as truancy, incorrigibility etc.

(c) "Extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(d) "Indian" means: (1) *Jurisdictional Purposes:* For purposes of matters related to child custody proceedings any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Conporation as defined in section 7 or the Alaska Native Claims Settlement Act (85 Stat. 688, 689).

(2) *Service eligibility for on or "near" reservation Children and Family Service Programs.* For purposes of Indian child and family service programs under section 201 of the Indian Child Welfare Act (92 Stat. 3075), any person who is a member, or a one-fourth degree or more blood quantum descendant of a member of any Indian tribe.

(3) *Service eligibility for off-reservation Children and Family Service Programs:* For the purpose of Indian child and family programs under section 202 of the Indian Child Welfare Act (92 Stat. 3073) any person who is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the state in which they reside, or who is a descendent, in the first or second degree, of any such member, or is an Eskimo or Aleut or other Alaska Native, or is considered by the Secretary of the Interior to be an Indian for any purpose, or is determined to be an Indian under regulations promulgated by the Secretary of Health, Education, and Welfare. Membership status is to be determined by the tribal law, ordinance, or custom.

(e) "Indian child" means any unmarried person who is under age eighteen and is either (1) a member of an Indian tribe, or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(f) "Indian child's tribe" means (1) the Indian tribe in which an Indian child is a member or is eligible for membership or (2) in the case of an Indian child who is a member of or is eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts. (Refer to Guidelines for State Courts-Indian Child Custody Proceedings.)

(g) "Indian custodian" means any Indian person(s) who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

(h) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

(i) "Indian tribe" means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended.

(j) "Parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.

(k) "Reservation" means Indian country as defined in section 1151 of Title 18, United States Code, and any lands not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual subject to a restriction by the United States against alienation.

(l) "State Court" means any agent or agency of a State including the District of Columbia or any territory or possession of the United States or any political subdivisions empowered by law to terminate parental rights or to make foster care placements, preadoptive placements, or adoptive placements.

(m) "Tribal court" means a court with jurisdiction over child custody proceedings and which is either a court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(n) For other applicable definitions refer to 25 CFR 20.1 and 271.2.

§ 23.3 Policy.

The policy of the Act and of these regulations is to protect Indian children from arbitrary removal from their families and tribal affiliations by establishing procedures to insure that measures to prevent the breakup of Indian families are followed in child custody proceedings. This will insure protection of the best interests of Indian children and Indian families by providing assistance and funding to Indian tribes and Indian organizations in the operation of child and family service programs which reflect the unique values of Indian culture and promote the stability and security of Indian families. In administering the grant authority for Indian Child and Family Programs it shall be Bureau policy to emphasize the design and funding of programs to promote the stability of Indian families.

Subpart B—Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel

§ 23.11 Notice.

(a) If the identity or location of the parents, Indian custodians or the Indian child's tribe cannot be determined, notice of the pendency of any involuntary child custody proceeding involving an Indian child in a state court shall be sent by registered mail with return receipt requested to the appropriate address listed in paragraph (b) of this section.

(b)(1) For proceedings in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York,

North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia or any territory or possession of the United States, notice should be sent to the following address: Eastern Area Director, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, D.C. 20245.

(2) For proceedings in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio or Wisconsin, notice should be sent to the following address: Minneapolis Area Director, Bureau of Indian Affairs, 831-2nd Avenue, S., Minneapolis, Minnesota 55402.

(3) For proceedings in Nebraska, North Dakota, or South Dakota, notice should be sent to the following address: Aberdeen Area Director, Bureau of Indian Affairs, 115-4th Avenue, SE., Aberdeen, South Dakota 57401.

(4) For proceedings in Kansas, Texas, and the western Oklahoma counties of Alfalfa, Beaver, Beckman, Blain, Bryan, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward, notice should be sent to the following address: Anadarko Area Director, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005.

(5) For proceedings in Montana or Wyoming notice should be sent to the following address: Billings Area Director, Bureau of Indian Affairs, 316 N. 26th Street, Billings, Montana 59101.

(6) For proceedings in Colorado or New Mexico, (exclusive of those New Mexico counties listed in paragraph (b)(9) below), notice should be sent to the following address: Albuquerque Area Director, Bureau of Indian Affairs, 5301 Central Avenue, NE., P.O. Box 8327, Albuquerque, New Mexico 87108.

(7) For proceedings in Alaska notice should be sent to the following address: Juneau Area Director, Bureau of Indian Affairs, P.O. Box 3-8000, Juneau, Alaska 99801.

(8) For proceedings in Arkansas, Missouri, and all Oklahoma counties not listed under paragraph (b)(4) above, notice should be sent to the following address: Muskogee Area Director, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma 74401.

(9) For proceedings in the Arizona counties of Apache, Coconino, and Navajo; the New Mexico counties of McKinley, San Juan, and Socorro; and the Utah county of San Juan, notice should be sent to the following address: Navajo Area Director, Bureau of Indian Affairs, Window Rock, Arizona 86515.

(10) For proceedings in Arizona (exclusive of those counties listed in paragraph (b)(9) above), Nevada, or Utah (exclusive of that county listed in paragraph (b)(9) above), notice should be sent to the following address: Phoenix Area Director, Bureau of Indian Affairs, P.O. Box 7007, Phoenix, Arizona 85011.

(11) For proceedings in Idaho, Oregon or Washington, notice should be sent to the following address: Portland Area Director, Bureau of Indian Affairs, 1425 N.E. Irving Street, Portland, Oregon 97208.

(12) For proceedings in California or Hawaii, notice should be sent to the following address: Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 85011.

(c) Notice shall include the following information if known:

(1) Name of the Indian child, birthdate, birthplace,

(2) Indian child's tribal affiliation,

(3) Names of Indian child's parents or Indian custodians, including birthdate, birthplace, and mother's maiden name, and

(4) A copy of the petition, complaint or other document by which the proceeding was initiated.

(d) Upon receipt of the notice, the Bureau shall make a diligent effort to locate and notify the Indian child's tribe and the Indian child's parents or Indian custodians. Such notice may be by registered mail with return receipt requested or by personal service and shall include the information provided under subsection (c) of this section in addition to the following:

(1) A statement of the right of the biological parents, Indian custodians and the Indian tribe to intervene in the proceedings.

(2) A statement that if the parent(s) or Indian custodian(s) is unable to afford counsel, counsel will be appointed to represent them.

(3) A statement of the right of the parents, the Indian custodians and the child's tribe to have, upon request, up to twenty additional days to prepare for the proceedings.

(4) The location, mailing address and telephone number of the court.

(5) A statement of the right of the parents, Indian custodians and the Indian child's tribe to petition the court for transfer of the proceeding to the child's tribal court, and their right to refuse to permit the case to be transferred.

(6) A statement of the potential legal consequences of the proceedings on the future custodial and parental rights of the parents or Indian custodians.

(7) A statement that, since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Act.

(e) The Bureau shall have ten days, after receipt of the notice from the persons initiating the proceedings, to notify the child's tribe and parents or Indian custodians and send a copy of the notice to the court. If within the ten-day time period the Bureau is unable to verify that the child is in fact an Indian, or meets the criteria of an Indian child as defined in section (4) of the Act, or is unable to locate the parents or Indian custodians, the Bureau shall so inform the court prior to initiation of the proceedings and state how much more time, if any, it will need to complete the search. The Bureau shall complete its search efforts even if those efforts cannot be completed before the child custody proceeding begins.

(f) Upon request from a potential participant in an anticipated Indian child custody proceeding, the Bureau shall attempt to identify and locate the Indian child's tribe, parents or Indian custodians for the person making the request.

§ 23.12 Designated tribal agent for service of notice.

Any Indian tribe entitled to notice may designate by resolution, or by such other form as the tribal constitution or current practice requires, an agent for service of such notice other than the tribal chairman and send a copy of the designation to the Secretary. The Secretary shall publish the name and address of the designated agent in the Federal Register on an annual basis. A current listing of such agents will be maintained by the Secretary and will be available through the Area Offices.

§ 23.13 Payment for appointed counsel in state Indian child custody proceedings.

(a) When a state court appoints counsel for an indigent party in an Indian child custody proceeding, for which the appointment of counsel is not authorized under state law, the court shall send written notice of the appointment to the Bureau of Indian Affairs Area office designated for that state in § 23.11 of this part. The notice shall include the following:

(1) Name, address and telephone number of attorney who has been appointed.

(2) Name and address of client for whom counsel is appointed.

(3) Relationship of client to child.

(4) Name of Indian child's tribe.

(5) Copy of the petition or complaint.

(6) Certification by the court that state law makes no provision for appointment of counsel in such proceedings.

(7) Certification by the court that the client is indigent.

(b) The Area Director shall certify that the client is eligible to have his or her appointed counsel compensated by the Bureau of Indian Affairs unless:

(1) The litigation does not involve a child custody proceeding as defined in 25 U.S.C.1903(1);

(2) The child who is the subject of the litigation is not an Indian child as defined in 25 U.S.C. 1903(4);

(3) The client is neither the Indian child who is the subject of the litigation, the Indian child's parent as defined in 25 U.S.C. 1903(9), or the child's Indian custodian as defined in 25 U.S.C.1903(6);

(4) State law provides for appointment of counsel in such procedings;

(5) The notice of the Area Director of appointment of counsel is incomplete; or

(6) No funds are available for such payments.

(c) No later than 10 days after receipt of the notice of appointment of counsel, the Area Director shall notify the court, the client and the attorney in writing whether the client has been certified as eligible to have his or her attorney fees and expenses paid by the Bureau of Indian Affairs. In the event that certification is denied, the notice shall include written reasons for that decision together with a statement that the Area Director's decision may be appealed to the Commissioner of Indian Affairs under the provisions of the 25 CFR Part 2.

(d) When determining attorney fees and expenses the court shall:

(1) Determine the amount of payments due appointed counsel by the same procedures and criteria it uses in determining the fees and expenses to be paid appointed counsel in juvenile delinquency procedings.

(2) Submit approved vouchers to the Area Director who certified eligibility for Bureau payment together with the court's certification that the amount requested is reasonable under the state standards and considering the work actually performed in light of the criteria that apply in determining fees and expenses for appointed counsel in juvenile delinquency proceedings.

(e) The Area Director shall authorize the payment of attorney fees and expenses in the amount requested in the voucher approved by the court unless:

(1) The court has abused its discretion under state law in determining the amount of the fees and expenses; or

(2) The client has not been previously certified as eligible under paragraph (c) of this section.

(f) No later than 15 days after receipt of a payment voucher the Area Director shall send written notice to the court, the client and the attorney stating the amount of payment, if any, that has been authorized. If the payment has been denied or the amount authorized is less than the amount requested in the voucher approved by the court, the notice shall include a written statement of the reasons for the decision together with a statement that the decision of the Area Director may be appealed to the Commissioner under the procedures of 25 CFR Part 2.

(g) Failure of the Area Director to meet the deadlines specified in paragraphs (c) and (f) of this section may be treated as a denial for purposes of appeal under paragraphs (f) of this section.

Supart C—Grants to Indian Tribes and Indian Organizations for Indian Child and Family Programs

§ 23.21 Eligibility requirements.

The governing body of any tribe or tribes, or any Indian organization, including multi-service Indian centers, may apply individually or as a consortium for a grant under this part.

§ 23.22 Purpose of grants.

Grants are for the purpose of:

(a) Establishment and operation of Indian child and family service programs. Examples of such programs may include but are not limited to:

(1) Operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children.

(2) Family assistance (including homemaker and home counselors), day care, afterschool care recreational activities, respite care, and employment.

(3) Employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters.

(4) Education and training of Indians (including tribal court judges and staff) in skills relating to child and family assistance and service programs.

(5) Subsidy programs under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate state standards of support for maintenance and medical needs.

(6) Guidance, legal representation, and advice to Indian families involved in tribal, state, or Federal child custody proceedings.

(7) Home improvements programs.

(8) Preparation and implementation of child welfare codes. An example in this regard is establishment of a system for licensing or otherwise regulating Indian foster and adoptive homes.

(b) Providing matching shares for other Federal or non-Federal grant programs as prescribed in § 23.43.

§ 23.23 Obtaining application instructions and materials.

Application instructions and related application materials may be obtained from Superintendents, Area Directors or the Commissioner.

§ 23.24 Content of application.

Application for a grant under this part shall include:

(a) Name and address of Indian tribal governing body(s) or Indian organization applying for a grant,

(b) Descriptive name of project.

(c) Federal funding needed,

(d) Population directly benefiting from the project,

(e) Length of project,

(f) Beginning date,

(g) Project budget categories or items.

(h) Program narrative statement,

(i) Certification or evidence of request by Indian tribe or board of Indian organization,

(j) Name and address of Bureau office to which application is submitted,

(k) Date application is submitted to Bureau, and

(l) Additional information pertaining to grant applications for funds to be used as matching shares will be requested as prescribed in § 23.43.

§ 23.25 Application selection criteria.

(a) The Commissioner or designated representative shall select for grants under this part those proposals which will in his or her judgment best promote the purposes of title II of the Act taking into consideration insofar as practicable the following factors:

(1) The number of actual or estimated Indian child placements outside the home, the number of actual or estimated Indian family breakups, and the need for directly-related preventive programs, all as determined by analysis of relevant statistical and other data available from tribal and public court records and from

the records of tribal, Bureau, public and private social services agencies serving Indian children and their families.

(2) The relative accessibility which the Indian population to be served under a specific proposal already has to existing child and family service programs emphasizing prevention of Indian family breakup. Factors to be considered in determining relative accessibility include:

(i) Cultural barriers;

(ii) Discrimination against Indians;

(iii) Inability of potential Indian clientele to pay for services;

(iv) Lack of programs which provide free service to indigent families;

(v) Technical barriers created by existing public or private programs;

(vi) Availability of Transportation to existing programs;

(vii) Distance between the Indian community to be served under the proposal and the nearest existing program;

(viii) Quality of service provided to Indian clientele; and

(ix) Relevance of service provided to specific needs of Indian clientele.

(3) The extent to which the proposed program would duplicate any existing child and family service program emphasizing prevention of Indian family breakup, taking into consideration all factors listed in paragraphs (a) (1) and (2) above.

(b) Selection for grants under this part for on or "near" reservation programs shall be limited to the governing body of the tribe to be served by the grant. However, the governing body of the tribe may make a subgrant or subcontract with another organizational entity including but not limited to an Indian organization, subject to the provisions of § 23.36.

(c) Preference for selection for grants under this part for off-reservation programs shall be given to those off-reservation Indian organizations which show evidence of substantial support from the Indian community or communities to be served by the grant. However, the Indian organization may make a subgrant or subcontract subject to the provisions of § 23.36. Factors to be considered in determining substantial support include:

(1) Letters of support from individuals and families to be served;

(2) Local Indian community representation in and control over the Indian entity requesting the grant.

(3) The requirements of this subsection do not apply in the case of an existing multi-service Indian center or an off-reservation Indian organization of demonstrated ability which has operated and continues to operate an Indian child welfare or family assistance program.

§ 23.26 Request from tribal governing body or Indian organization.

(a) The Bureau shall only make a grant under this part for an on or "near" reservation program when officially requested to do so by a tribal governing body. This request may be in the form of a tribal resolution, an endorsement included in the grant application or such other forms as the tribal constitution or current practice requires.

(b) The Bureau shall only make a grant under this part for an off-reservation program when officially requested to do so by the governing body of an Indian organization. This request may be in one of the forms prescribed in (a) above and shall be further subject to the provisions of § 23.25(c) (1), (2), and (3) above.

§ 23.27 Grant approval limitation.

(a) *Area Office approval.* Authority for approval of a grant application under this part shall be with the Area Director when the intent, purpose and scope of the grant proposal pertains solely to an Indian tribe or tribes, or to an Indian organization representing an off-reservation community, located within that Area Director's administrative jurisdiction.

(b) *Central Office approval.* Authority for approval of a grant application under this part shall be with the Commissioner when the intent, purpose and scope of the grant proposal pertains to Indian tribes, off-reservation communities or Indian organizations representing different Area Office administrative jurisdictions but located within the Commissioner's overall jurisdiction.

(c) Grant approvals under this section shall be subject to availability of funds. These funds will include those which are:

(1) Directly appropriated for implementation of this Act. Distribution to approved applicants of these appropriated and available funds will be based upon a formula designed to ensure insofar as possible that all approved applicants receive a proportionately equitable share sufficient to fund an effective program. This formula will be published as a Federal Register Notice.

(2) Appropriated under other Acts for Bureau programs which are related to the purposes prescribed in § 23.22.

§ 23.28 Submitting application.

(a) *Agency Office.* An application for a grant under this part for an on or "near" reservation program shall be initially submitted to the appropriate Superintendent for review and recommendation as prescribed in § 23.29.

(b) *Area Office.* An application for a grant under this part for an off-reservation program shall be initially submitted to the appropriate Area Director for review and action as prescribed in § 23.31.

§ 23.29 Agency Office review and recommendation.

(a) Recommendation for approval or disapproval of a grant under this part shall be made by the Superintendent when the intent, purpose and scope of the grant proposal pertains to or involves an Indian tribe or tribes located within that Superintendent's administrative jurisdiction.

(b) Upon receipt of an application for a grant under this part, the Superintendent shall:

(1) Acknowledge receipt of the application in writing within 10 days of its arrival at the Agency Office.

(2) Review the application for completeness of information and promptly request any additional information which may be required to make a recommendation.

(3) Assess the completed application for appropriateness of purpose as prescribed in § 23.22, and for overall feasibility.

(4) Inform the applicant, in writing and before any final recommendation, of any special problems or impediments which may result in a recommendation for disapproval; offer any available technical assistance required to overcome such problems or impediments; and solicit the applicant's written response.

(5) Recommend approval or disapproval following full assessment of the completed application and forward the application and recommendation to the Area Director for further action.

(6) Promptly notify the applicant in writing as to the final recommendation. If the final recommendation is for disapproval, the Superintendent will include in the written notice to the applicant the specific reasons therefor.

(7) In instances where a joint application is made by tribes representing more than one Agency Office administrative jurisdiction, copies of the application shall be provided by the applicants to each involved Superintendent for review and recommendation as prescribed in this section.

§ 23.30 Deadline for agency office action.

Within 30 days of an application for a grant under this part, the Superintendent shall take action as prescribed in § 23.29. Extension of this deadline will require consultation with, and written consent of, the applicant.

§ 23.31 Area office review and action.

(a) Upon receipt of an application for a grant requiring Area Office approval, the Area Director shall:

(1) Review the application following applicable review procedures prescribed in § 23.29.

(2) Review the Superintendent's recommendation as it pertains to the application.

(3) Approve or disapprove the application.

(b) In instances where a joint application is made by tribes representing more than one Area Office administrative jurisdiction, the Area Director shall add his or her recommendation for approval or disapproval to that of the Superintendent and shall forward the application and recommendations to the Commissioner for further action.

(c) Upon taking action as prescribed in paragraphs (a) and (b) of this section, the Area Director shall promptly notify the applicant in writing as to the action taken. If the action taken is disapproval or recommendation for disapproval of the application, the Area Director will include in the written notice the specific reasons therefor.

§ 23.32 Deadline for Area Office action.

Within 30 days of receipt of an application for a grant under this part, the Area Director shall take action as prescribed in § 23.31. Extension of this deadline will require consultation with, and written consent of, the applicant.

§ 23.33 Central Office review and decision.

Upon receipt of an application for a grant requiring Central Office approval, the Commissioner shall:

(a) Review the application following the applicable review procedures prescribed in § 23.29.

(b) Review Agency and Area Office recommendations as they pertain to the application.

(c) Approve or disapprove the application.

(d) Promptly notify the applicant in writing as to the approval or disapproval of the application. If the application is disapproved, the Commissioner will include in the written notice the specific reasons therefor.

§ 23.34 Deadline for Central Office action.

Within 30 days of receipt of an application for a grant under this part the Commissioner shall take action as prescribed in § 23.23. Extension of this deadline will require consultation with a written consent of the applicant.

§ 23.35 Grant execution and administration.

(a) Grant approved pursuant to § 23.27(a) shall be executed and administered at the Area Office level.

(b) Grants approved pursuant to § 23.27(b) shall be executed and administered at the Central Office level provided that the Commissioner may designate an Area Office to execute or administer such a grant.

§ 23.36 Subgrants and subcontracts.

The grantee may make subgrants or subcontracts under this part provided that such subgrants or subcontracts are for the purpose for which the grant was made and that the grantee retains administrative and financial responsibility over the activity and the funds.

Subpart D—General Grant Requirements

§ 23.41 Applicability.

The general requirements for grant administration in this part are applicable to all Bureau grants provided to tribal governing bodies and to Indian organizations under this part, except to the extent inconsistent with an applicable Federal statute or regulation.

§ 23.42 Reports and availability of information to Indians.

Any tribal governing body or Indian organization receiving a grant under this part shall make information and reports concerning that grant available to the Indian people which it serves or represents. Access to these data shall be requested in writing and shall be made available within 10 days of receipt of that request, subject to any exceptions provided for in the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93-502; 88 Stat. 1561).

§ 23.43 Matching share.

(a) Specific Federal laws notwithstanding, grant funds provided under this part for on or "near" reservation programs may be used as non-Federal matching share in connection with funds provided under Titles IVB and XX of the Social Security Act or under any other Federal or non-Federal programs which contribute to the purposes specified in § 23.22.

(b) In the establishing, operating and funding of Indian child and family service programs both on, "near" or off-reservation, the Secretary of the Interior may enter into agreements with the Secretary of Health, Education, and Welfare for the use of funds appropriated for similar programs of the Department of Health, Education, and Welfare.

(c) Superindents, Area Directors, and their designated representatives will, upon tribal or Indian organization request, assist in obtaining information concerning other Federal agencies with matching fund programs and will, upon request, provide technical assistance in developing applications for submission to those Federal agencies.

§ 23.44 Performing personal services.

Any grant provided under this part may include provisions for the performance of personal services which would otherwise be performed by Federal employees.

§ 23.45 Penalties.

If any officer, director, agent, employee of, or anyone connected with any recipient of a grant, subgrant, contract or subcontract under this part, does embezzle, willfully misapply, steal, or obtain by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract or subcontract, he or she may be subject to penalties as provided in 18 U.S.C. 1001.

§ 23.46 Fair and uniform services.

Any grant provided under this part shall include provisions to assure the fair and uniform provision by the grantee of services and assistance to all Indians included within or affected by the intent, purpose and scope of that grant.

Subpart E—Grant Revision, Cancellation or Assumption

§ 23.51 Revisions or amendments of grants.

(a) Request for budget revisions or amendments to grants awarded under this part shall be made as provided in § 276.14 of this Chapter.

(b) Requests for revisions or amendments to grants provided under this part, other than budget revisions referred to in paragraph (a) of this section, shall be made to the Bureau officer responsible for approving the grant in its original form. Upon receipt of a request for revisions or amendments to grants, the responsible Bureau officer shall follow precisely the same review procedures and time specified in § 23.29.

§ 23.52 Assumption.

(a) When the Bureau cancels a grant for cause as specified in § 276.15 of this Chapter, the Bureau may assume control or operation of the grant program, activity or service. However, the Bureau shall not assume a grant program, activity or service that it did not administer before tribal grantee control unless the tribal grantee and the Bureau agree to the assumption.

(b) When the Bureau assumes control or operation of a grant program cancelled for cause, the Bureau may decline to enter into a new grant agreement until satisfied that the cause for cancellation has been corrected.

Subpart F—Hearings and Appeals

§ 23.61 Hearings.

Hearings referred to in § 276.15 of this Chapter shall be conducted as follows:

(a) The grantee and the Indian tribe(s) affected shall be notified in writing, at least 10 days before the hearing. The notice should give the date, time, places, and purpose of the hearing.

(b) A written record of the hearing shall be made. The record shall include written statements submitted at the hearing or within 5 days following the hearing.

(c) The hearing will be conducted on as informal a basis as possible.

§ 23.62 Appeals from decision or action by Superintendent.

(a) A grantee may appeal any decision made or action taken by a Superintendent under this part. Such appeal shall be made to the Area Director as provided in Part 2 of this Chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 23.63 Appeals from decision or action by Area Director.

(a) A grantee may appeal any decision made or action taken by an Area Director under this part. Such appeal shall be made to the Commissioner as provided in Part 2 of this Chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 23.64 Appeals from decision or action by Commissioner.

(a) A grantee may appeal any decision made or action taken by the Commissioner under this part only as provided in Part 2 of this Chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 23.65 Failure of Agency or Area Office to act.

Whenever a Superintendent or Area Director fails to take action on a grant application within the time limits established in this part, the applicant may at its option, request action by the next higher Bureau official who has approval authority as prescribed in this part. In such instances, the Superintendent or Area Director who failed to act shall immediately forward the application and all related materials to that next higher Bureau official.

Subpart G—Administrative Requirements

§ 23.71 Uniform administrative requirements for grants.

Administrative requirements for all grants provided under this part shall be those prescribed in Part 276 of this Chapter.

Subpart H—Administrative Provisions

§ 23.81 Recordkeeping and information availability.

(a) Any state court entering a final decree or adoptive order for any Indian child shall provide the Secretary of the Interior within 30 days a copy of said decree or order, together with any information necessary to show:

(1) Name of the child, the tribal affiliation of the child, and the Indian blood quantum of the child;

(2) Names and addresses of the biological parents and the adoptive parents;

(3) Identity of any agency having relevant information relating to said adoption placement.

To assure and maintain confidentiality where the biological parent(s) have by affidavit requested their identity remain confidential, a copy of such affidavit shall be provided the Secretary.

Such information, pursuant to Section 301(a) of the Act, shall not be subject to the Freedom of Information Act (5 U.S.C. 552) as amended. The Secretary shall insure that the confidentiality of such information is maintained.

The proper address for transmittal of information required by Section 301(a) of the Act is: Chief, Division of Social Services; Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20245. The envelope containing all such information should be marked "Confidential." This address shall be sent to the highest court of Appeal, the Attorney General and Governor of each state. In some states, a state agency has been designated to be repository for all state court adoption information. Where such a system is operative, there is no objection to that agency assuming reporting responsibilities for the purpose of this Act.

(b) The Division of Social Services, Bureau of Indian Affairs is authorized to receive all information and to maintain a central file on all state Indian adoptions. This file shall be confidential and only designated persons shall have access to it. Upon the request of the adopted Indian individual over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Division of Social Services shall disclose such information as may be necessary for enrollment or determining any rights or benefits associated with membership, except the name of the biological parents where an affidavit of confidentiality has been filed, to those persons eligible to request such information under the Act. The Chief Tribal Enrollment officer of the Bureau of Indian Affairs is authorized to disclose enrollment information relating to an adopted Indian child where the biological parents have by affidavit requested anonymity. In such cases, the Chief Tribal Enrollment Officer shall certify to the child's tribe, where the information warrants, that the child's parentage and other circumstances entitle the child to enrollment consideration under the criteria established by said tribe.

Subpart I—Assistance to State Courts

§ 23.91 Assistance in identifying witnesses.

Upon the request of a party in an involuntary child custody proceeding or of a court the Secretary shall assist in identifying qualified expert witnesses. Such requests for assistance should be sent to the Area Director in the Area where the court proceedings are initiated. Refer to § 23.11(b).

§ 23.92 Assistance in identifying interpreters.

Upon the request of a party in any Indian child custody proceeding or of a court the Secretary shall assist in identifying interpreters. Such requests for assistance should be sent to the Area Director in the Area where the court proceedings are initiated. Refer to § 23.11(b).

§ 23.93 Assistance in locating biological parents of Indian child after termination of adoption.

Upon the request of a child placement agency, the court or an Indian tribe, the Secretary shall assist in locating the biological parents or prior Indian custodian of an Indian adopted child whose adoption has been terminated. Such requests for assistance should be sent to the Area Director in the Area where the court proceedings occur. Refer to § 23.11(b).

Forrest J. Gerard,

Assistant Secretary, Indian Affairs.

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Part VI

Department of Housing and Urban Development

Office of Assistant Secretary for Community Planning and Development

Block Grants Program Provisions

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development

[24 CFR Part 570]

[Docket No. R-79-678]

Community Development Block Grants, Program Requirements for Administration of Block Grant Funds by Subrecipients and Program Requirements for Disposition of Real Property Under the Block Grant Program.

AGENCY: Department of Housing and Urban Development.

ACTION: Proposed rulemaking.

SUMMARY: HUD is soliciting comments on this proposed rulemaking which adds to Subpart K of the regulations governing the community development block grant program under Title I of the Housing and Community Development Act of 1974, as amended. Section 570.612 sets forth program requirements governing the administration of block grant funds provided by HUD recipients directly to certain private entities as subrecipients for the undertaking of approved block grant program activities. Certain of the areas covered by the amendment include written agreements, compliance with OMB Circular A-102, audits and inspections, nondiscriminations, and conflict of interest.

In addition, § 570.613 sets forth requirements governing the disposition of real property acquired by any entity, public or private, with block grant assistance.

DATE: Comments due: September 1, 1979.

ADDRESS: Comments should be addressed to: Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 5218, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: William Thomas, Office of Block Grant Assistance, Department of Housing and Urban Development, Washington, D.C. 20410, 202/755-6322.

SUPPLEMENTARY INFORMATION:

Background

Sections 570.204 authorized the provision of block grant funds by HUD recipients to certain eligible entities for activities designed to implement the recipient's strategies for economic development and neighborhood revitalization. Eligible entities under § 570.204 are private nonprofit entities, neighborhood-based nonprofit organizations, Small Business Companies and local development corporations. In addition, § 570.202(c)(i) authorizes block grant assistance to profit and nonprofit private entities for acquisition of property for rehabilitation and for the rehabilitation of such property. Section 570.612 of this proposed rule sets forth standards and guidelines for the use and administration of block grant funds by these subrecipients. Section 570.613 sets forth guidelines for the disposition of real property under the block grant program.

Written Agreements

Paragraph (b) provides that subrecipients are required to execute a written agreement with the HUD recipient from which they receive funds. The paragraph sets forth the provisions that must be included in the agreement.

OMB Circular A-102

The Office of Management and Budget has issued Circular A-102, which contains uniform administrative requirements for grants-in-aid to State and local governments. Paragraph (c) provides that all subrecipients must comply with the requirements of Attachments A (Cash Deposits), B (Bonding and Insurance), C (Retention and Custodial Requirements for Records), E (Program Income), G (Standards for Grantee Financial Management Systems), N (Property Management Standards) and O (Procurement Standards) of OMB Circular A-102.

Reports and Information

Paragraph (d) requires that the subrecipients are to furnish HUD or the recipient, as requested, with various reports and information relating to the matters covered by this section.

Audits and Inspections

Paragraph (e) of § 570.612 requires that subrecipients make all records relating to block grant matters available to HUD, the Comptroller General, and the recipient.

HUD recipients are required by § 570.509 to schedule audits in connection with its own audit. Such audits shall include an audit relating to block grant funded activities carried out by subrecipients in conformance with the requirements of § 570.509 and the HUD audit guide.

Unearned Payments

Paragraph (f) of § 570.612 provides that unearned payments in the form of monetary advances to subrecipients may be suspended, terminated, or recaptured, if conditions or administrative requirements for the use of block grant funds imposed by HUD or the recipient are not accepted or not met.

Nondiscrimination

Paragraph (g) of § 570.612 states that all activities conducted with block grant funds by subrecipients are subject to requirements of the block grant program prohibiting discrimination.

Requirements of Other Laws

Paragraph (h)(1) of § 570.612 sets forth that block grant funded activities conducted by subrecipients are subject to other Federal statutes which are applicable to the block grant program.

Lobbying Prohibited

Paragraph (h)(2) of § 570.612 prohibits the use of block grant funds by subrecipients for publicity or propaganda purposes designed to support or defeat legislation pending before local, State or Federal governments.

Use of Property and Ownership of Facilities

Paragraphs (h)(3) and (h)(4) of § 570.612 establish standards for the use of real property acquired with block grant funds and the ownership of facilities purchased with block grant funds by subrecipients.

Unless real property is acquired expressly for disposition purposes, it shall be used only for the purposes of the block grant program and may not be transferred without the concurrence of the recipient and HUD.

Facilities purchased or constructed with block grant funds must be operated in a nondiscriminatory manner for use by the general public. The charging of excessive fees for use of the facility which would have the effect of limiting use by lower-income persons is not permitted. If a facility is to be sold or transferred, the block grant investment shall be reimbursed to the recipient as program income to be used for eligible community development activities.

Disposition

Paragraph (h)(5) of § 570.612 specifies that subrecipients must follow the requirements of § 570.613 regarding the disposition of real property with block grant assistance.

Conflict of Interest

Section 570.612(h)(6) requires recipients to establish safeguards to prohibit individuals associated with subrecipients from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. In some instances, persons who are subject to the conflict of interest provisions are members of subrecipients. Paragraph (h)(6) of § 570.612 provides that such persons may retain their membership in such entities provided that they do not have a direct financial interest in the entity or, if they advise or assist the entity in the use of block grant funds, that they may not receive compensation for the services provided.

Monitoring

Paragraph (i) of § 570.612 establishes requirements for the monitoring of subrecipients by the recipient. The recipient shall make an annual determination as to whether each subrecipient has complied with the requirements and conditions of the required written agreement and has a capacity to continue to use block grant funds.

HUD reserves the right, as a corrective and remedial action under § 570.910, to order the termination of block grant assistance to a subrecipient whenever it is determined that it has failed to meet its obligations under the written agreement, or the block grant regulations. Recipients must establish similar provisions governing termination or suspension which must be included as a part of the written agreement.

Disposition Requirements

Section 570.613 sets forth the program requirements relating to disposition of real property by grant recipients, their designated public agencies, and subrecipients under § 570.612. Paragraph (a) relates to the applicability and scope of the section. Proceeds from the disposition of real property shall be returned to the grant recipient as program income, for eligible community development activities.

Determination of Fair Value

Paragraph (b) of § 570.613 requires that the recipient determine the fair market value of any property to be disposed of pursuant to § 570.201(b). real property may be disposed of at less than the fair market value if a written policy has been adopted by the recipient or subrecipient which describes the circumstances under which such dispositions will take place.

Prevention of Speculation

Paragraph (d) of § 570.613 is intended to prevent speculation in the disposition of real property under the block grant program, especially where disposition has occurred at less than fair market value. Policies shall be adopted to provide the length of time real property must be used for the stated community development purpose and adequate controls established to preclude speculation in the resale or reuse of such properties.

Special Information

With respect to all of the above, interested persons are invited to participate in the making of the final rule by submitting written comments or views on these proposed amendments. to facilitate HUD's consideration and review of written comments, reviewers are requested to clearly identify the paragraph to which the comments are addressed. Comments should be filed with the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. All relevant comments received on or before the date specified above will be considered before adoption of the final rule. Copies of comments will be available for examination during regular business hours at the above address.

Finding of Inapplicability with respect to Environmental Impact have been prepared in accordance with the National Environmental Policy Act of 1969. copies of this Finding are available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk at the above address.

Accordingly, 24 CFR Part 570, is amended by revising the index and inserting §§ 570.612 and 570.613.

1. the Table of Contents to 24 CFR Part 570, is revised as follows:

* * * * *

Sec.

570.612 Program requirements for subrecipients.

570.613 Disposition of real property.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); (Section 7(o) of the Department of HUD Act, 42 U.S.C. 3535(o), Section 324 of the Housing and community Development Amendments of 1978.)

2. 24 CFR Part 570 is amended by inserting §§ 570.612 and 570.613 as follows:

§ 570.612 Program requirements for subrecipients.

(a) *Applicability and Scope.* The program requirements of this section apply to the use of block grant funds provided by the recipient directly to subrecipients which are either eligible entities under § 570.204(a)(2) or private entities assisted pursuant to § 570.202(c)(1).

(b) *Written agreement.* A subrecipient is required to execute a written agreement with the HUD recipient pursuant to the requirements of this paragraph. The written agreement shall at a minimum, include the following: (1) the specific activity or activities to be undertaken, (2) identification of the actual entity undertaking the activity or activities, including its officers and directors and the legal authority under which it is established and operates, (3) the cost, time period and deadlines associated with the activities, (4) general operating conditions and requirements with regard to accounting and fiscal matters for the use of block grant funds, (5) a provision providing for the recapture of block grant funds when the subrecipient fails to comply with the terms of the agreement or refuses to accept conditions imposed by HUD, (6) a provision stating that an eligible entity shall not dispose of real or personal property through sale, use, or location without the written permission of the recipient, (7) conflicts of interest, (8) the use of program income, (9) remedies in the event of default or inability to perform on the part of the subrecipient; and (10) other requirements of this section. block grant funds may only be distributed by the recipient to any subrecipient except pursuant to the written agreement required by this paragraph.

(c) *OMB Circular A-102.* The requirements of Attachments A (Cash Deposits), B (Bonding and Insurance), C (Retention and Custodial Requirements for Records), E (Program Income), G (Standards for Grantee Financial Management Systems), N (Property Management Standards) and O (Procurement Standards) of OMB Circular A-102 (42 FR 45828) shall apply to all activities carried out with block grant funds by a subrecipient.

(d) *Reports and information.* The subrecipients receiving block grant assistance shall furnish HUD or the recipient with such statements, records, data and information, as HUD or the

recipient may request pertaining to matters covered by this section.

(e) *Audits and inspections.* At any time during normal business hours any subrecipient receiving block grant assistance shall make all of its records relating to matters covered by this section available to the recipient, HUD, and/or representatives of the Comptroller General in order to permit examination of any audits, invoices, materials, payrolls, personnel records, conditions of employment and other data relating to all matters covered by this section. The audit requirements set forth in § 570.509 shall be fully applicable.

(f) *Unearned payments.* Unearned payments in the form of monetary advances to subrecipients may be suspended or terminated if conditions imposed by the recipient or HUD are not accepted or if the administrative requirements for the use of block grant funds are not met. A written agreement provision of paragraph (b) provides for the recapture of these funds.

(g) *Nondiscrimination.* The nondiscrimination provisions of §§ 570.601 and 570.912 are applicable to subrecipients. No person in the United States shall on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with community development funds.

(h) *Grant administration.* All activities conducted with block grant funds by subrecipients shall be subject to the following:

(1) *Other program requirements*—(i) Requirements governing Environment, Historic Preservation, Labor Standards, Architectural Barriers Act of 1968, Hatch Act, National Flood Insurance Program, Clean Air Act and Fedeal Water Pollution Control Act, and Lead-Based Paint Poisoning Prevention Act set forth in §§ 570.603, 570.604, 570.606, 570.608, 570.609, 570.610, and 570.611, respectively, shall be applicable. (ii) The grantee shall be fully responsible for assuring compliance with the above provisions, and thus may not delegate responsibility for compliance reviews to subrecipients.

(2) *Lobbying prohibited*—Block grant funds shall not be used by a subrecipient for publicity or propaganda purposes designed to support or defeat legislation pending before Federal, State, or local government.

(3) *Use of real property*—In addition to the applicable requirements set forth in OMB Circular A–102, whenever block grant funds are used by a subrecipient for the acquisition or construction in whole or in part (including rehabilitation) of property other than office equipment, supplies, materials and other personal property used for the administration of the activity) and excluding real property acquired pursuant to § 570.201(a) and (b) (expressly for disposition), title to said property shall not be transferred after date of purchase or completion of construction without the approval of the recipient and HUD.

(4) *Ownership of facilities*—(i) Where subrecipients use block grant funds to acquire title to facilities, including those described in § 570.201(c) or § 570.203(b), they shall be operated so as to be open for use by the general public during all normal hours of operation. Reasonable fees may be charged for the use of facilities acquired by subrecipients, but charges, such as excessive membership fees, which will have the effect of precluding low- and moderate-income persons from using the facilities are not permitted.

(ii) In those instances where, during the first five years of operation, the subrecipient seeks to dispose of such facility under provisions other than § 570.201(a) and (b) where property is not acquired specifically for disposition purposes, the proceeds from the disposition of real property shall be returned to the recipient as program income. Proceeds derived by the recipient as a result of the disposition of real property shall be used by the recipient for eligible community development activities to further the general purposes and objectives of the Act.

(5) *Disposition of real property*—In those instances where real property acquired, in whole or in part, with block grant funds is to be disposed of by sale, lease, donation, or otherwise by a subrecipient, the program requirements set forth in § 570.613 governing disposition shall apply.

(6) *Conflict of interest requirements*—Subrecipients must establish safeguards to prohibit individuals associated with such entities from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Individuals subject to conflict of interest provisions may nonetheless be members of, or associated with, or provide assistance to such entities so long as such persons do not have any financial interest in the activity or receive compensation for such services.

(i) *Monitoring of block grant funded activities undertaken by eligible entities.* The following policies shall apply to the monitoring of block grant funded activities conducted by subrecipients.

(1) Grantees are responsible for monitoring the compliance of subrecipients with the standards established in this section and in the applicable provisions of OMB Circular A–102.

(2) The recipient shall, on an annual basis, make a determination as to whether the subrecipient has conformed with the written agreement as described in paragraph (b) of this section and the standards and requirements of this section. The recipient must also determine on an annual basis whether the subrecipient has a continuing capacity to carry out block grant assisted activities in a timely manner.

(3) Suspension and termination procedures shall be governed by Subpart O of this Part. HUD reserves the right as a corrective and remedial action pursuant to § 570.910 to order the termination of any grant assistance to a subrecipient when it is determined that the subrecipient has failed to comply with the requirements of this section.

§ 570.613 Disposition of real property.

(a) *Applicability and scope.* The requirements of this section apply to the disposition of real property pursuant to § 570.201(b) by grant recipients, their designated public agencies, and their subrecipients under § 570.612(a). The applicable requirements of OMB Circular A–102, Federal Management Circular 74–4, and this Part apply to such activities. The proceeds from the disposition of real property shall be returned to the grant recipient as program income. Proceeds derived by the grantee as a result of the disposition of real property shall be used by the grantee for eligible community development activities to further the general pusrposes and objectives of the Act, as set forth in Subpart A.

(b) *Determination of value.* The following policies regarding fair market value apply to the disposition of real property purchased in whole or in part with block grant assistance:

(1) Recipients shall determine the fair market value of any real property acquired and disposed of pursuant to § 570.201 (a) and (b).

(2) If the estimated value of the property exceeds $2,500, the determination shall be based upon and appraisal prepared by a qualified real estate property appraiser.

(3) Unless prohibited by State or local law, real property may be disposed of at fair market value, or at a price less than or greater than fair market value.

(c) *Disposition of less than fair market value.* In those instances where real property is to be disposed of at less than fair market value as determined by a qualified real property appraiser, the recipient shall develop and adopt a written record which:

(1) Is available to the public; and (2) sets forth and documents the circumstances under which the real property may be disposed of at less than fair market value and how that value is established, (3) states the sales price and fair market value, (4) indicated how the disposition pursuant to § 570.201(b) is consistent with the recipient's community development plan or how the disposition pursuant to § 570.204(c)(4) is consistent with the recipient's neighborhood revitalization or economic development strategy.

(d) *Prevention of speculation.* It is intended that acquisition and subsequent disposition of property acquired in whole or part through the use of block grant assistance will further the objective and purpose of the Act. Disposition of land for speculation purposes alone does not further the objectives and purposes of the Act.

Where disposition ocurs for a specified purpose, it is the community's responsibility to implement appropriate policies to ensure that said property is used for that purpose for the specified time period, and that the use of property is consistent with the recipients overall community development plan.

(e) *Unanticipated disposition.* When real property is acquired for other than disposition purposes, and a situation develops where it becomes necessary to dispose of said real property during the first five years of operation, the proceeds from the dispostion of the real property shall be returned to the recipient as program income. Proceeds derived by the recipient as a result of the disposition of real property shall be used by the recipient for eligible community development activities for the general purposes and objectives of the Act.

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Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY*	USDA/ASCS		DOT/SECRETARY*	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLS	HEW/FDA		DOT/SLS	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.**

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

SECURITIES AND EXCHANGE COMMISSION

7870 2-7-79 / Investment adviser requirements concerning disclosure, recordkeeping, applications for registration and annual filings

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing July 30, 1979